SCANNED

MONTANA LEGISLATIVE HISTORY

Chapter 343 19 97

Bill H 231 S _____ Original bill & history X C

H. Committee on JUDICIARY			S. Committee on JUDICIARY		
Hearing Date(s)	1/29	X C	Hearing Date(s)	3/19	X C
	2/10	X C		3/25	X C
EXEC ACTION	2/18	X C	EXEC ACTION	3/26	X C
	_____	___C		_____	___C
Date Out	_____	___C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

	TRANSMITTED TO SENATE		
1/28	FIRST READING		
1/28	REFERRED TO STATE ADMINISTRATION		
3/06	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
3/12	2ND READING CONCURRED	48	2
3/13	3RD READING CONCURRED	45	5
	RETURNED TO HOUSE		
3/15	SIGNED BY SPEAKER		
3/15	SIGNED BY PRESIDENT		
3/17	TRANSMITTED TO GOVERNOR		
3/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 97		
	EFFECTIVE DATE: 10/01/97		

HB 228 INTRODUCED BY COBB *LC0661 DRAFTER: ERICKSON*

PROVIDE APPROPRIATIONS TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR DISTRIBUTION TO INDIAN HEALTH CLINICS

1/11	INTRODUCED		
1/11	FIRST READING		
1/11	REFERRED TO APPROPRIATIONS		
2/05	HEARING		
2/14	TABLED IN COMMITTEE		
3/28	MISSED DEADLINE FOR 67TH DAY TRANSMITTAL		
	DIED IN COMMITTEE		

HB 229 INTRODUCED BY COBB *LC0123 DRAFTER: CAMPBELL*

CREATE A LOCAL GOVERNMENT OPERATIONS REVIEW PROGRAM TO BE CONDUCTED ON A CONTRACT BASIS BY THE LEGISLATIVE AUDIT DIVISION AND PARTICIPATING LOCAL GOVERNMENTS

1/11	INTRODUCED		
1/11	FIRST READING		
1/11	REFERRED TO LOCAL GOVERNMENT		
1/11	FISCAL NOTE REQUESTED		
1/16	FISCAL NOTE RECEIVED		
1/16	FISCAL NOTE PRINTED		
1/23	HEARING		
1/29	COMMITTEE REPORT—BILL PASSED		
1/30	2ND READING PASSED	86	14
1/31	3RD READING PASSED	83	15
	TRANSMITTED TO SENATE		
2/03	FIRST READING		
2/03	REFERRED TO LOCAL GOVERNMENT		
3/06	HEARING		
3/06	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

HB 230 INTRODUCED BY STORY *LC0135 DRAFTER: HEIMAN*

RESTRUCTURE THE INCOME TAX RATES BY ESTABLISHING SEPARATE TAX RATES FOR TAXPAYERS USING THE MARRIED FILING JOINTLY FILER STATUS AND FOR TAXPAYERS USING THE MARRIED FILING SEPARATELY FILER STATUS

1/11	INTRODUCED
1/11	FIRST READING
1/11	REFERRED TO TAXATION
1/11	FISCAL NOTE REQUESTED
1/17	FISCAL NOTE RECEIVED

1/17	FISCAL NOTE PRINTED
4/05	MISSED DEADLINE FOR 71ST DAY TRANSMITTAL
	DIED IN COMMITTEE

HB 231 INTRODUCED BY BARNHART, ET AL. *LC0036 DRAFTER: STERNBERG*

GENERALLY REVISE DOMESTIC RELATIONS STATUTES REGARDING THE CUSTODY AND VISITATION OF CHILDREN INVOLVED IN A MARRIAGE DISSOLUTION

1/11	INTRODUCED		
1/11	FIRST READING		
1/11	REFERRED TO JUDICIARY		
1/11	FISCAL NOTE REQUESTED		
1/16	FISCAL NOTE RECEIVED		
1/21	FISCAL NOTE PRINTED		
1/29	HEARING		
2/06	TABLED IN COMMITTEE		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED AS AMENDED	78	21
2/26	3RD READING PASSED	74	24
	TRANSMITTED TO SENATE		
3/03	FIRST READING		
3/03	REFERRED TO JUDICIARY		
3/19	HEARING		
3/27	COMMITTEE REPORT—BILL CONCURRED		
4/07	2ND READING CONCURRED	49	0
4/08	3RD READING CONCURRED	49	1
	RETURNED TO HOUSE		
4/11	SIGNED BY SPEAKER		
4/11	SIGNED BY PRESIDENT		
4/14	TRANSMITTED TO GOVERNOR		
4/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 343		
	EFFECTIVE DATE: 10/01/97		

HB 232 INTRODUCED BY BOHLINGER, ET AL. *LC0161 DRAFTER: CAMPBELL*

LIMIT THE LOCATION OF OFF-PREMISES SALES BY STATE RECREATIONAL VEHICLE DEALERS

1/11	INTRODUCED
1/11	FIRST READING
1/11	REFERRED TO BUSINESS & LABOR
1/21	HEARING
1/23	TABLED IN COMMITTEE
2/27	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
	DIED IN COMMITTEE

HB 233 INTRODUCED BY STORY *LC0674 DRAFTER: ERICKSON*

ALLOW A COUNTY TO RETAIN FEES FOR GVW PERMITS ISSUED BY A COUNTY

1/11	INTRODUCED
1/11	FIRST READING
1/11	REFERRED TO TRANSPORTATION
1/11	FISCAL NOTE REQUESTED
1/18	FISCAL NOTE RECEIVED
1/22	HEARING
1/22	FISCAL NOTE PRINTED
1/27	TABLED IN COMMITTEE

HOUSE BILL NO. 231

INTRODUCED BY B Barkhurst Brooke Eck Watson Dowell Cochiarella Sands Wyatt, Kottel, Hollyer Hagedorn

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DOMESTIC RELATIONS STATUTES REGARDING THE CUSTODY AND VISITATION OF CHILDREN INVOLVED IN A MARRIAGE DISSOLUTION; REVISING APPLICABLE TERMINOLOGY; REQUIRING ADOPTION OF A FINAL PARENTING PLAN THAT INCLUDES SPECIFIC PROVISIONS IN THE BEST INTERESTS OF THE CHILD, AN OPTION FOR DISPUTE RESOLUTION OR MEDIATION EXCEPT IN CASES OF PROVEN CHILD OR SPOUSAL ABUSE, AND AN OPTION FOR PERIODIC REVIEW OF THE PARENTING PLAN; ALLOWING ADOPTION OF AN INTERIM PARENTING PLAN DURING THE TIME DISSOLUTION PROCEEDINGS ARE PENDING; REQUIRING DESIGNATION OF ONE PARENT AS CUSTODIAN FOR APPLICABILITY OF FEDERAL OR STATE LAWS; REQUIRING THAT PARENTS RECEIVE INFORMATION REGARDING PARENTAL RESPONSIBILITY AND CONTACT WITH THE CHILD IN DISPUTED CASES; ALLOWING THE TRIAL COURT TO DETERMINE THE APPROPRIATE LEVEL OF EVALUATION NECESSARY TO ESTABLISH PARENTING ARRANGEMENTS; PROVIDING A FEE FOR FILING A PETITION FOR CONTESTED AMENDMENT OF A PARENTING PLAN TO DEFRAY THE COSTS OF IMPLEMENTING THE COURT-ORDERED EDUCATIONAL PROGRAM ON THE EFFECTS OF DIVORCE ON CHILDREN IN DISPUTED CASES AND THE COST OF PARENTING EDUCATION WHEN ORDERED FOR THE INVESTIGATION AND PREPARATION OF A REPORT CONCERNING PARENTING ARRANGEMENTS; REVISING APPROPRIATE TERMINOLOGY IN GRANDPARENT VISITATION STATUTES AND APPLICABLE CRIMINAL STATUTES; AMENDING SECTIONS 25-1-201, 40-1-105, 40-1-213, 40-1-402, 40-4-103, 40-4-104, 40-4-105, 40-4-109, 40-4-123, 40-4-201, 40-4-204, 40-4-205, 40-4-211, 40-4-212, 40-4-213, 40-4-214, 40-4-215, 40-4-216, 40-4-217, 40-4-219, 40-4-220, 40-4-221, 40-4-225, 40-4-226, 40-4-302, 40-4-307, 40-6-211, 40-6-221, 40-9-101, 40-9-102, 45-5-304, 45-5-631, 45-5-632, AND 45-5-633, MCA; REPEALING SECTIONS 40-4-222, 40-4-223, 40-4-224, 40-6-222, 40-6-223, 40-6-224, AND 40-6-231, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-1-201, MCA, is amended to read:

"**25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the

following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $80; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, a fee of $120; ~~and~~ for filing a petition for legal separation, a fee of $120; and for filing a petition for a contested amendment of a final parenting plan, a fee of $120;

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five pages of each file, per request, and 25 cents per additional page;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100.

(2) Except as provided in subsections (3) through ~~(8)~~ (9), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the fee for filing a petition for dissolution of marriage or legal separation, $40 must be deposited in the state general fund, $35 must be remitted to the state to be deposited as provided in 19-5-404, $5 must be deposited in the children's trust fund account established by 41-3-702, and $20 must be deposited in and credited to the district court fund. If no district court fund exists, the $20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment as provided in subsection (1)(c), $15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be remitted to the state to be deposited as provided in 19-5-404.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund $20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries.

(9) The fee for filing a petition for a contested amendment of a parenting plan must be remitted by

the clerk of the district court to the credit of the district court to defray the costs of the court-sponsored educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and to defray the expense of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a)."

Section 2. Section 40-1-105, MCA, is amended to read:

"**40-1-105. Application of the Montana Rules of Civil Procedure.** (1) Except for proceedings ~~coming~~ under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for declaration of invalidity of marriage ~~shall~~ must be entitled, "In re the Marriage of ..... and .....". A ~~custody~~ parenting or support proceeding ~~shall~~ must be entitled, "In re the ~~(custody)~~ (parenting) (support) of .....".

(3) The initial pleading in all proceedings under this chapter ~~shall~~ must be denominated a petition. A responsive pleading ~~shall~~ must be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, ~~shall~~ must be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment"."

Section 3. Section 40-1-213, MCA, is amended to read:

"**40-1-213. Judicial approval.** (1) The district court may order the clerk of the district court to issue a marriage license and a marriage certificate form to a party ~~aged~~ 16 or 17 years of age who has no parent capable of consenting to ~~his~~ the party's marriage or has the consent of both parents or of the parent having the actual care, ~~custody~~ parenting authority, and control to ~~his~~ the party's marriage, if capable of giving consent, or of ~~his~~ the party's guardian. The court must require both parties to participate in a period of marriage counseling involving at least two separate counseling sessions not less than 10 days apart with a designated counselor as a condition of the order for issuance of a marriage license and a marriage certificate form under this section.

(2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve ~~his~~ the party's best ~~interest~~ interests. Pregnancy alone does not establish that the best ~~interest~~ interests of the party will be served.

(3) The district court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization."

Section 4. Section 40-1-402, MCA, is amended to read:

"**40-1-402. Declaration of invalidity.** (1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) a party lacked capacity to consent to the marriage at the time that the marriage was entered into, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving the essentials of marriage;

(b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time that the marriage was entered into, the other party did not know of the incapacity;

(c) a party was under ~~the age of~~ 16 years of age or was ~~aged~~ 16 or 17 years of age and did not have the consent of the party's parents or guardian or judicial approval; or

(d) the marriage is prohibited.

(2) A declaration of invalidity under subsections (1)(a) through (1)(c) may be sought by any of the following persons and must be commenced within the times specified, but ~~in no event may~~ a declaration of invalidity may not be sought after the death of either party to the marriage:

(a) for lack of capacity to consent because of mental incapacity or infirmity, no later than 1 year after the petitioner obtained knowledge of the described condition;

(b) for lack of capacity to consent because of the influence of alcohol, drugs, or other incapacitating substances, no later than 1 year after the petitioner obtained knowledge of the described condition;

(c) for lack of capacity to consent because of force, duress, or fraud, no later than 2 years after the petitioner obtained knowledge of the described condition;

(d) for the reason set forth in subsection (1)(b), by either party, no later than 4 years after the petitioner obtained knowledge of the described condition;

(e) for the reason set forth in subsection (1)(c), by the underaged party or the party's parent or guardian, ~~prior to~~ before the time that the underaged party reaches the age at which the party could have married without satisfying the omitted requirement.

(3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time ~~prior to~~ before the death of one of the parties.

(4) Children born of a marriage declared invalid are legitimate.

(5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of chapter 4 relating to property rights of the spouses, maintenance, support, and ~~custody~~ parenting of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

(6) The clerk of the court shall give notice of the entry of a decree declaring the invalidity of a marriage:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered, who shall enter the fact of invalidity in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that the official enter the fact of invalidity in the appropriate record."

Section 5. Section 40-4-103, MCA, is amended to read:

"**40-4-103. Application of the Montana Rules of Civil Procedure.** (1) Except for proceedings coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for dissolution of marriage or legal separation ~~shall~~ must be entitled, "In re the Marriage of ..... and .....". A ~~custody~~ parenting or support proceeding ~~shall~~ must be entitled, "In re the ~~(custody)~~ (parenting) (support) of .....".

(3) The initial pleading in all proceedings under this chapter ~~shall~~ must be denominated a petition. A responsive pleading ~~shall~~ must be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, ~~shall~~ must be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, ~~shall~~ may not be awarded to one of the parties but ~~shall~~ must provide that it affects the status previously existing between the parties in the

manner decreed."

Section 6. Section 40-4-104, MCA, is amended to read:

"**40-4-104. Dissolution of marriage -- legal separation.** (1) The district court shall enter a decree of dissolution of marriage if:

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state or was stationed in this state while a member of the armed services and that the domicile or military presence has been maintained for 90 days ~~next~~ preceding the making of the findings;

(b) the court finds that the marriage is irretrievably broken, which findings ~~shall~~ must be supported by evidence:

(i) that the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding the commencement of this proceeding; or

(ii) that there is serious marital discord ~~which~~ that adversely affects the attitude of one or both of the parties towards the marriage;

(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of 40-4-107 either do not apply or have been met; and

(d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision for ~~child custody~~ parenting, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects."

Section 7. Section 40-4-105, MCA, is amended to read:

"**40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses.** (1) The verified petition in a proceeding for dissolution of marriage or legal separation ~~shall~~ must allege that the marriage is irretrievably broken and ~~shall~~ must set forth:

(a) the age, occupation, and residence of each party and ~~his~~ the party's length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably

broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding the commencement of this proceeding; or

(ii) there is serious marital discord ~~which~~ that adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support~~, custody, and visitation~~ of the children and maintenance of a spouse; ~~and~~

(f) a proposed parenting plan, if applicable; and

(g) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service file a verified response. ~~No~~ A decree may not be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter."

Section 8. Section 40-4-109, MCA, is amended to read:

"40-4-109. Independence of provisions of decree or temporary order. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit ~~visitation~~ parental contact with the child is not suspended but ~~he~~ the party may move the court to grant an appropriate order."

Section 9. Section 40-4-123, MCA, is amended to read:

"40-4-123. Jurisdiction and venue. (1) District courts, municipal courts, justices' courts, and city courts have concurrent jurisdiction to hear and issue orders under 40-4-121.

(2) The municipal judge, justice of the peace, or city court judge shall on motion suspend all further

proceedings in the action and certify the pleading and any orders to the clerk of the district court of the county where the action was begun if an action for declaration of invalidity of a marriage, legal separation, or dissolution of marriage or for ~~child custody~~ parenting is pending between the parties. From the time of the certification of the pleadings and any orders to the clerk, the district court has the same jurisdiction over the action as if it had been commenced in district court.

(3) An action brought under 40-4-121 may be tried in the county in which either party resides or in which the physical abuse was committed.

(4) The right to petition for relief may not be denied because the plaintiff has vacated the residence or household to avoid abuse."

Section 10. Section 40-4-201, MCA, is amended to read:

"**40-4-201. Separation agreement.** (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, ~~custody~~ parenting, and ~~visitation of~~ parental contact with their children. In cases in which children are involved, the separation agreement must contain a parenting plan as required in [section 19].

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, ~~custody~~ parenting, and ~~visitation of~~ parental contact with children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request that the parties ~~to~~ submit a revised separation agreement or it may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance and not unsatisfactory as to support:

(a) unless the separation agreement provides to the contrary, its terms ~~shall~~ must be set forth in the decree of dissolution or legal separation and the parties ~~shall be~~ ordered to perform them; or

(b) if the separation agreement provides that its terms ~~shall~~ may not be set forth in the decree, the

decree ~~shall~~ must identify the separation agreement and state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except for terms concerning the support, ~~custody~~ parenting, or ~~visitation of~~ parental contact with the children, the decree may expressly preclude or limit modification of terms set forth in the decree if provided for in the separation agreement ~~so provides~~. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree."

Section 11. Section 40-4-204, MCA, is amended to read:

"**40-4-204. Child support -- orders to address health insurance -- withholding of child support.** (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the ~~custodial parent~~ parents;

(c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and the child's educational and medical needs;

(e) ~~the financial resources and needs of the noncustodial parent;~~

~~(f)~~ the age of the child;

~~(g)~~(f) the cost of day care for the child;

~~(h)~~(g) any ~~custody arrangement~~ parenting plan that is ordered or decided upon; and

~~(i)~~(h) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A

verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or that it is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(4) Each temporary or final district court judgment, decree, or order establishing a child support obligation under this title and each modification of a final order for child support must include a medical support order as provided for in Title 40, chapter 5, part 8.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this

section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's monthly support obligation if the excess support is a result of annualized withholding.

(6) For the purposes of income withholding under subsection (5), each district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the parent obligated to pay support to inform the court and, if the department of public health and human services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(7) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of public health and human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

(8) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support to be paid ~~to:~~

~~(i) the legal custodian of the minor child;~~

~~(ii) (A) any other person, organization, or agency having legal physical custody of the minor child under a legal assignment of rights; or~~

~~(B) the court for the benefit of the minor child;~~

~~(iii) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or~~

~~(iv) any assignee or other person, organization, or agency authorized to receive or collect child support~~ pursuant to the child support guidelines adopted under 40-5-209.

(b) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court."

Section 12. Section 40-4-205, MCA, is amended to read:

"**40-4-205. ~~Representation of child~~ Guardian ad litem.** (1) The court may appoint a guardian ad litem to represent the interests of a minor dependent child with respect to the child's support, ~~custody~~ parenting, and ~~visitation~~ parental contact. The guardian ad litem may be an attorney. The county attorney, a deputy county attorney, if any, or the department of public health and human services or any of its staff may not be appointed for this purpose.

(2) The guardian ad litem has the following general duties:

(a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts related to the child's support, ~~custody~~ parenting, and ~~visitation~~ parental contact;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to make written reports to the court concerning the child's support, ~~custody~~ parenting, and ~~visitation~~ parental contact;

(d) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's support, ~~custody~~ parenting, and ~~visitation~~ parental contact; and

(e) to perform other duties as directed by the court.

(3) The guardian ad litem has access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or ~~custodians~~ caretakers.

(4) The court shall enter an order for costs and fees in favor of the child's guardian ad litem. The order must be made against either or both parents, except that if the responsible party is indigent, the costs must be waived."

Section 13. Section 40-4-211, MCA, is amended to read:

"**40-4-211. ~~Child custody jurisdiction~~ Jurisdiction -- commencement of parenting proceedings.** (1) A court of this state competent to decide ~~child custody~~ parenting matters has jurisdiction to make a ~~child custody~~ parenting authority determination by initial or ~~modification~~ amended decree if:

(a) this state:

(i) is the home state of the child at the time of commencement of the proceedings; or

(ii) had been the child's home state within 6 months before commencement of the ~~proceeding~~ proceedings and the child is absent from this state because of ~~his~~ the child's removal or retention by ~~a~~ any

person ~~claiming his custody or for other reason~~ and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because:

(i) the child and ~~his~~ the parents or the child and at least one contestant have a significant connection with this state; and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and:

(i) has been abandoned; or

(ii) it is necessary in an emergency to protect ~~him~~ the child because ~~he~~ the child has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsection (1)(a), (1)(b), or (1)(c) or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine ~~custody of~~ parenting authority over the child; and

(ii) it is in ~~his~~ the child's best interest that the court assume jurisdiction.

(2) Except under subsections (1)(c) and (1)(d), physical presence in this state of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a ~~child custody~~ parenting authority determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine ~~his custody~~ parenting authority.

(4) A ~~child custody~~ parenting plan proceeding is commenced in the district court:

(a) by a parent, by filing a petition:

(i) for dissolution or legal separation; or

(ii) for ~~custody of the child~~ parenting authority in the county in which ~~he~~ the child is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for ~~custody of the child~~ parenting authority in the county in which ~~he~~ the child is permanently resident or found, but only if ~~he~~ the child is not ~~in the physical custody of~~ physically residing with one of ~~his~~ the child's parents.

(5) Notice of a ~~child custody~~ parenting proceeding ~~shall~~ must be given to the child's parent, guardian, ~~custodian~~ caretaker, those persons ~~having physical custody of~~ with whom the child is physically

residing, and all other contestants, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties."

Section 14. Section 40-4-212, MCA, is amended to read:

"**40-4-212. Best ~~interest~~ interests of child.** (1) The court shall determine ~~custody~~ the parenting plan in accordance with the best ~~interest~~ interests of the child. The court shall consider all relevant parenting factors, including but not limited to:

(a) the wishes of the child's parent or parents ~~as to custody~~;

(b) the wishes of the child ~~as to a custodian~~;

(c) the interaction and interrelationship of the child with the child's parent or parents and siblings and with any other person who ~~may~~ significantly ~~affect~~ affects the child's best interest;

(d) the child's adjustment to home, school, and community;

(e) the mental and physical health of all individuals involved;

(f) physical abuse or threat of physical abuse by one parent against the other parent or the child; ~~and~~

(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;

(h) continuity and stability of care;

(i) developmental needs of the child;

(j) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay, which is considered to be not in the child's best interests;

(k) whether a parent has knowingly failed to financially support a child that the parent is able to support, which is considered to be not in the child's best interests;

(l) whether the child has frequent and continuing contact with both parents, which is considered to be in the child's best interests unless the court determines, after a hearing, that contact with a parent would be detrimental to the child's best interests. In making that determination, the court shall consider evidence of physical abuse or threat of physical abuse by one parent against the other parent or the child, including but not limited to whether a parent or other person residing in that parent's household has been convicted of any of the crimes enumerated in 40-4-219(8)(b).

(m) adverse effects on the child resulting from continuous and vexatious parenting plan amendment actions.

(2) A de facto ~~custody~~ parenting arrangement, in the absence of a prior ~~custody~~ parenting decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219.

(3) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:

~~(a) Custody should be granted to the parent who has provided most of the primary care during the child's life.~~

~~(b)~~ A ~~custody~~ parenting plan action brought by a parent within 6 months after a child support action against that parent is vexatious.

(b) A motion to amend a final parenting plan pursuant to 40-4-219 is vexatious if a parent seeks to amend a final parenting plan without making a good faith effort to comply with the provisions of the parenting plan or with dispute resolution provisions of the final parenting plan.

~~(4) The following are rebuttable presumptions:~~

~~(a) A knowing failure to pay birth-related costs that the person is able to pay is not in the best interest of the child.~~

~~(b) Failure to pay child support that the person is able to pay is not in the best interest of a child in need of the child support.~~"

Section 15. Section 40-4-213, MCA, is amended to read:

"**40-4-213. ~~Temporary orders~~ Interim parenting plan.** (1) A party to a ~~custody~~ parenting proceeding may move for ~~a temporary custody order~~ an interim parenting plan. The motion must be supported by an affidavit as provided in 40-4-220(1). The court may ~~award temporary custody~~ adopt an interim parenting plan under the standards of 40-4-212 after a hearing or under the standards of 40-4-212 and 40-4-220(2) before a hearing. If there is no objection, the court may act solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any ~~temporary custody order~~ interim parenting plan is vacated unless a parent ~~or the child's custodian~~ moves that the proceeding continue as a ~~custody~~ parenting proceeding and the court finds, after a hearing, that the circumstances of the parents and the best ~~interest~~ interests of the child require that a ~~custody decree~~ parenting plan be ~~issued~~ adopted.

(3) If a ~~custody~~ parenting proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any ~~temporary custody order~~ interim parenting plan is vacated.

(4) Adoption of a final parenting plan under [section 19] vacates any interim parenting plan adopted under this section."

Section 16. Section 40-4-214, MCA, is amended to read:

"**40-4-214. Interviews.** (1) The court may interview the child in chambers to ascertain the child's wishes as to ~~his custodian~~ residence and ~~as to visitation~~ parental contact. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record in the case.

(2) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given ~~shall~~ must be in writing and made available by the court to counsel upon request. Counsel may examine as a witness any professional personnel consulted by the court."

Section 17. Section 40-4-215, MCA, is amended to read:

"**40-4-215. Investigations and reports.** (1) ~~In contested custody proceedings and in other custody proceedings if~~ If a parent or ~~the child's custodian~~ a court-appointed third party requests, or if the court finds that a parenting proceeding is contested, the court may order an investigation and report concerning ~~custodial~~ parenting arrangements for the child. The investigator may be the child's guardian ad litem or other professional considered appropriate by the court. The department of public health and human services may not be ordered to conduct the investigation or draft a report unless the ~~parent or the child's custodian~~ person requesting the investigation is a recipient of aid to families with dependent children, food stamps, or public assistance and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and report must be paid according to the final order. The cost of the educational evaluation under subsection (2)(a) must be paid from the fees for filing petitions for contested amendment of a parenting plan, as provided in 25-1-201(9).

(2) The court shall determine, if appropriate, the level of evaluation necessary for adequate investigation and preparation of the report, which may include one or more of the following:

(a) parenting education;

(b) mediation pursuant to 40-4-303;

(c) factfinding by the investigator; and

(d) psychological evaluation of the parties.

~~(2)~~(3) In preparing a report concerning a child, the investigator may consult any person who ~~may have~~ has information about the child and the child's potential ~~custodial~~ parenting arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. ~~The~~ Except as required for children 16 years of age or older, the investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the ~~parent or the child's custodian~~ persons or entities authorized by law to grant or withhold access to the records. The child's consent must be obtained if the child has reached the age of 16 unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection ~~(3)~~ (4) are fulfilled, the investigator's report may be received in evidence at the hearing.

~~(3)~~(4) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. ~~The~~ When consistent with state and federal law, the investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection ~~(2)~~ (3), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing. The results of the investigation must be included in the court record and may, without objection, be sealed."

NEW SECTION. **Section 18. Final parenting plan -- purpose and objectives.** The objectives of a final parenting plan are to:

(1) protect the best interest of the child of a marriage, consistent with 40-4-212;

(2) provide for the physical care of the child;

(3) maintain the child's emotional stability and minimize the child's exposure to parental conflict;

(4) provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future amendment to the final parenting plan;

(5) set forth the authority and responsibilities of each parent with respect to the child, consistent with the criteria in [section 19]; and

(6) encourage the parents, when appropriate under [section 19], to meet their responsibilities to their minor children through agreements in the parenting plan rather than through judicial intervention.

NEW SECTION. **Section 19. Final parenting plan criteria.** (1) In every dissolution proceeding, proceeding for declaration of invalidity of marriage, parenting plan proceeding, or legal separation proceeding that involves a child, each parent or both parents jointly shall submit to the court, in good faith, a proposed final plan for parenting the child, which must include the allocation of parenting functions. A final parenting plan must be incorporated into any final decree or amended decree, including cases of dissolution by default. As used in this section, parenting functions means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child, including:

(a) maintaining a loving, stable, consistent, and nurturing relationship with the child;

(b) attending to the daily needs of the child such as feeding, physical care and grooming, supervision, health care, day care, and engaging in other activities that are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

(d) assisting the child in developing and maintaining appropriate interpersonal relationships; and

(e) exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances.

(2) Based on the best interest of the child, a final parenting plan must include, at a minimum, provisions for:

(a) designation of a parent as custodian of the child, solely for the purposes of all other state and federal statutes that require a designation or determination of custody, but the designation may not affect either parent's rights and responsibilities under the parenting plan;

(b) designation of the legal residence of both parents and the child, except as provided in 40-4-217;

(c) a residential schedule specifying the periods of time during which the child will reside with each parent, including provisions for holidays, birthdays of family members, vacations, and other special occasions;

(d) finances to provide for the child's needs; and

(e) any other factors affecting the physical and emotional health and well-being of the child.

(3) Based on the best interest of the child, a parenting plan may include:

(a) provisions for periodic review of the parenting plan when requested by either parent or the child or when circumstances arise that are foreseen by the parents as triggering a need for review, such as attainment by the child of a certain age or if a change in the child's residence is necessitated;

(b) sanctions that will apply if a parent fails to follow the terms of the parenting plan, including contempt of court;

(c) allocation of parental decisionmaking authority regarding the child's:

(i) education;

(ii) religious upbringing; and

(iii) health care;

(d) the method by which future disputes concerning the child will be resolved between the parents, other than court action; and

(e) other provisions applicable to the unique circumstances of the child or the family situation that the parents agree will facilitate a meaningful, ongoing relationship between the child and parents.

(4) The court may in its discretion order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding adoption of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency, or court action.

(5) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent and, regardless of the allocation of decisionmaking in the parenting plan, either parent may make emergency decisions affecting the child's safety or health. When mutual decisionmaking is designated in the parenting plan but cannot be achieved regarding a particular issue, the parents shall make a good faith effort to resolve the issue through any dispute resolution process provided for in the final parenting plan.

(6) If a parent fails to comply with a provision of the parenting plan, the other parent's obligations under the parenting plan are not affected.

Section 20. Section 40-4-216, MCA, is amended to read:

"**40-4-216. Hearings.** (1) ~~Custody~~ Parenting plan proceedings shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court ~~deems~~ considers necessary to determine the best interest of the child.

(3) The court, without a jury, shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a ~~custody~~ parenting hearing but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary that the record of any interview, report, investigation, or testimony in a ~~custody~~ parenting proceeding be kept secret to protect the child's welfare, the court may make an appropriate order sealing the record."

Section 21. Section 40-4-217, MCA, is amended to read:

"**40-4-217. ~~Visitation~~ Notice of intent to move.** (1) ~~A parent who is not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.~~

~~(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.~~

~~(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; however, the court may not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health or unless the provisions of subsection (6) apply.~~

~~(4) As long as a noncustodial parent who has visitation rights under a decree or a custody agreement remains a resident of this state, a resident custodial parent shall, before changing the child's residence to another state and unless the noncustodial parent has given written consent, give written notice to the noncustodial parent, as provided in subsection (5).~~

~~(5) The~~ A parent who intends to change residence shall, unless precluded under [section 19], provide written notice ~~required by subsection (4)~~ to the other parent.

(2) If a parent's change in residence will significantly affect the child's contact with the other parent, as defined in 40-4-219(1)(e), notice must be served personally or given by certified mail not less

than 30 days before the proposed change in residence and must include a proposed revised residential schedule. Proof of service must be filed with the court that ~~issued the custody order~~ adopted the parenting plan. ~~The purpose of the notice is to allow the noncustodial parent to seek a modification of the parent's visitation schedule.~~ Failure of the parent who receives notice to respond to the written notice or to seek amendment of the residential schedule pursuant to 40-4-219 within the 30-day period constitutes acceptance of the proposed revised residential schedule.

~~(6) (a) If a noncustodial parent or other person residing in the noncustodial parent's household has been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person who has been granted custody of the child pursuant to court order may file an objection to visitation with the court. The custodial parent or other person having custody shall give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent has 20 days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days of the response.~~

~~(b) The noncustodial parent has the burden at the hearing to prove that visitation by the noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of visitation is not in the best interest of the child.~~

~~(c) This subsection (6) applies to the following crimes:~~

~~(i) deliberate homicide, as described in 45-5-102;~~

~~(ii) mitigated deliberate homicide, as described in 45-5-103;~~

~~(iii) sexual assault, as described in 45-5-502;~~

~~(iv) sexual intercourse without consent, as described in 45-5-503;~~

~~(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-5-505;~~

~~(vi) incest, as described in 45-5-507;~~

~~(vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);~~

~~(viii) endangering the welfare of children, as described in 45-5-622;~~

~~(ix) partner or family member assault of the type described in 45-5-206(1)(a);~~

~~(x) sexual abuse of children, as described in 45-5-625.~~"

Section 22. Section 40-4-219, MCA, is amended to read:

"**40-4-219. ~~Modification~~ Amendment of parenting plan -- mediation.** (1) The court may in its discretion ~~modify~~ amend a prior ~~custody decree~~ parenting plan if it finds, upon the basis of facts that have arisen since the prior ~~decree~~ plan or that were unknown to the court at the time of entry of the prior ~~decree~~ plan, that a change has occurred in the circumstances of the child ~~or the child's custodian~~ and that the ~~modification~~ amendment is necessary to serve the best interest of the child. ~~and if it further finds that~~ In determining the child's best interest under this section, the court may, in addition to the criteria in 40-4-212, also consider whether:

(a) the ~~custodian agrees~~ parents agree to the ~~modification~~ amendment;

(b) the child has been integrated into the family of the petitioner with consent of the ~~custodian~~ parents;

(c) ~~the child's present environment endangers seriously the child's physical, mental, moral, or emotional health and that the harm likely to be caused by a change of environment is outweighed by its advantages to the child;~~

~~(d)~~ the child is 14 years of age or older and desires the ~~modification~~ amendment;

~~(e)~~(d) ~~the custodian~~ one parent has willfully and consistently:

(i) ~~refuses~~ refused to allow the child to have any contact with the ~~noncustodial~~ other parent; or

(ii) ~~attempts~~ attempted to frustrate or deny contact with the child by the ~~noncustodial parent's exercise of visitation rights~~ other parent; or

~~(f)~~(e) ~~the custodial parent~~ one parent has changed or intends to change the child's residence ~~to another state~~ in a manner that significantly affects the child's contact with the other parent. A change in residence of more than 30 miles from the child's present residence constitutes a significant effect on parent-child contact.

(2) A court may modify a de facto ~~custody~~ parenting arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume ~~the custodian~~ a parent is not acting in the child's best interest if the ~~custodian~~ parent does any of the acts specified in subsection ~~(1)(e)~~ (1)(d) or (8).

(4) The court may ~~modify~~ amend the prior ~~decree~~ parenting plan based on subsection ~~(1)(f)~~ (1)(e) to provide a new ~~visitation~~ residential schedule for parental contact with the child and to apportion transportation costs between the parents.

(5) Attorney fees and costs must be assessed against a party seeking ~~modification~~ frivolous or repeated amendment if the court finds that the ~~modification~~ amendment action is vexatious and constitutes harassment.

(6) A ~~custody decree~~ parenting plan may be ~~modified~~ amended upon the death of ~~the custodial~~ one parent pursuant to 40-4-221.

(7) As used in this section, "prior ~~custody decree"~~ parenting plan" means a ~~custody~~ parenting determination contained in a judicial decree or order made in a ~~custody~~ parenting proceeding. In proceedings for amendment under this section, a proposed amended parenting plan must be filed and served with the motion for amendment and with the response to the motion for amendment. Preference must be given to carrying out the parenting plan.

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection ~~(8)(c)~~ (8)(b), the other parent or any other person who has been granted ~~custody of~~ rights to the child pursuant to court order may file an objection to the current ~~custody~~ parenting order with the court. The parent or other person having ~~custody~~ rights to the child pursuant to court order shall give notice to the other parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has 20 days from the notice to respond. If the ~~other~~ parent who receives notice of objection fails to respond within 20 days, the ~~custody~~ parenting rights of ~~the other~~ that parent are suspended until further order of the court. If ~~the other~~ that parent responds and objects, a hearing must be held within 30 days of the response.

(b) ~~The other parent has the burden at the hearing to prove that custody by the other parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of custody is not in the best interest of the child.~~

~~(c)~~ This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-5-505;

(vi) incest, as described in 45-5-507;

(vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(viii) endangering the welfare of children, as described in 45-5-622;

(ix) partner or family member assault of the type described in 45-5-206(1)(a);

(x) sexual abuse of children, as described in 45-5-625.

(9) Except in cases of physical abuse or threat of physical abuse by one parent against the other parent or the child, or when a parent has been convicted of a crime enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and court action."

Section 23. Section 40-4-220, MCA, is amended to read:

"40-4-220. Affidavit practice. (1) ~~A~~ Unless the parties agree to an interim parenting plan or an amended parenting plan, the moving party seeking ~~a temporary custody order~~ an interim parenting plan or ~~modification~~ amendment of a ~~custody decree~~ final parenting plan shall submit, together with ~~his~~ the moving papers, an affidavit setting forth facts supporting the requested ~~order~~ plan or ~~modification~~ amendment and shall give notice, together with a copy of ~~his~~ the affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, based on the best interests of the child, in which case it shall set a date for hearing on an order to show cause why the requested ~~order~~ plan or ~~modification~~ amendment should not be granted.

(2) (a) A party seeking ~~a temporary custody order~~ an interim parenting plan may request that the court grant a temporary ~~assignment of custody~~ order providing for living arrangements for the child ex parte. ~~He~~ The party shall ~~so~~ make the request in ~~his~~ the moving papers and shall submit an affidavit showing that:

(i) no previous ~~determination of custody~~ parenting plan has been ~~made~~ ordered by a court and it would be in the child's best interest under the standards of 40-4-212 if temporary ~~custody were placed with the person designated~~ living arrangements for the child were as proposed by the moving party; or

(ii) although a previous ~~determination of custody~~ parenting plan has been ~~made~~ ordered, an emergency situation has arisen in the child's present environment ~~endangers his physical or emotional health~~ that is detrimental to the child's best interests and an immediate change ~~of custody would serve~~ in

the parenting plan is necessary to protect the ~~child's physical or emotional health~~ child.

(b) If the court finds from the affidavits submitted by the moving party that ~~a temporary assignment of custody~~ the interim parenting plan proposed by the moving party would be in the child's best interest under the standards of 40-4-212 or that the child's ~~physical or emotional health is endangered~~ present environment is detrimental to the child's best interest and would be protected by ~~a temporary assignment of custody~~ the interim parenting plan, the court shall make an order ~~placing temporary custody with the person designated~~ implementing the interim parenting plan proposed by the moving party ~~or with some other person designated by the court and~~. The court shall require all parties to appear and show cause within 20 days from the execution of the ~~order~~ interim parenting plan why~~, in the case of a temporary order issued under subsection (2)(a)(i),~~ the ~~temporary order~~ interim parenting plan should not remain in effect until further order of court ~~or, in the case of a temporary order issued under subsection (2)(a)(ii), the court should not restore the child to the custodian from whom the child was removed by the temporary order~~."

Section 24. Section 40-4-221, MCA, is amended to read:

"**40-4-221. Determination of ~~custody~~ child's care upon death of ~~custodial~~ parent.** (1) Upon the death of a parent ~~granted custody of a child, custody shall pass to the noncustodial parent unless~~, one or more parties named in subsection (2) may request a ~~custody~~ parenting plan hearing. The ~~noncustodial~~ surviving parent ~~shall~~ must be a party in any proceeding brought under this section.

(2) Upon the death of a parent ~~granted custody of a child~~, any of the following parties may request a ~~custody~~ parenting plan hearing ~~and seek custody of the child~~:

(a) the ~~noncustodial~~ natural parent;

(b) the surviving spouse of the deceased ~~custodial~~ parent;

(c) a person nominated by the will of the deceased ~~custodial~~ parent;

(d) any person nominated by the child if the child is at least 12 years old;

(e) any other person if that person has actual physical control over the child;

(f) any other party whom, upon showing of good cause, the court permits to intervene as an interested party.

(3) The hearing and determination of ~~custody shall be~~ a parenting plan is governed by this part."

Section 25. Section 40-4-225, MCA, is amended to read:

"**40-4-225. Access to records by ~~noncustodial~~ parent.** Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, law enforcement, and school records, may not be denied to a parent ~~because such parent is not the child's custodial parent~~ who is a party to a parenting plan."

Section 26. Section 40-4-226, MCA, is amended to read:

"**40-4-226. Court-ordered educational program on effects of dissolution of marriage on children.** (1) In a proceeding for dissolution of marriage involving a minor child or in a ~~custody modification~~ parenting plan proceeding involving a minor child, a court shall inform the parties, excluding the minor child, of available educational programs concerning the effects of dissolution of marriage on children and, if the court finds that it would be in the best interest of the minor child, ~~may~~ shall order the parties to attend a court-sponsored program. The program may be divided into sessions. The program must be educational in nature and may not be designed for individual therapy.

(2) ~~Any facts presented at an educational session resulting from a referral under this section may not be considered in a dissolution of a marriage or a custody modification proceeding, nor may a report resulting from an educational session become part of the record of the dissolution or proceeding unless the parties have stipulated in writing to the contrary.~~

~~(3) The fees or costs of an educational session under this section must be borne by the parties and may be assessed by the court in an equitable manner.~~ The cost of implementing the court-sponsored educational program for each district court, provided for in subsection (1), must be paid from the fees for filing petitions for contested amendment of a parenting plan, provided for in 25-1-201(9)."

Section 27. Section 40-4-302, MCA, is amended to read:

"**40-4-302. Mediation proceeding -- tolling of statute of limitations.** (1) The purpose of a mediation proceeding is to reduce the acrimony that may exist between the parties and to develop an agreement that is supportive of the best interests of a child involved in the proceeding.

(2) The mediator shall attempt to effect a settlement of the ~~child custody~~ parenting, child support, ~~visitation~~ parental contact with the child, maintenance, or property settlement dispute. The mediator may not use coercive measures to effect the settlement. The mediator may recommend that a party obtain assistance from other resources in the community.

(3) Subject to 40-4-301(1), the mediator may exclude attorneys from the mediation sessions. The parties' attorneys may confer with the mediator prior to the mediation session and may review and approve any agreement.

(4) An applicable statute of limitations is tolled as to the participants during the period of mediation. The tolling commences on the date the parties agree in writing to participate in the mediation or when the court orders mediation, whichever is later, and ends on the date the mediation is officially terminated by the mediator."

Section 28. Section 40-4-307, MCA, is amended to read:

"**40-4-307. Mediator qualifications.** A mediator ~~shall~~ must meet the following minimum qualifications:

(1) knowledge of the court system and the procedures used in family law matters;

(2) knowledge of other resources in the community to which the parties may be referred for assistance;

(3) if applicable, knowledge of child development, clinical issues relating to children, the effects of marriage dissolution on children, and ~~child custody~~ parenting research; and

(4) knowledge of the mediation process."

Section 29. Section 40-6-211, MCA, is amended to read:

"**40-6-211. Obligations of parents for the support and education of their children.** The parent or parents ~~entitled to the custody~~ of a child ~~must~~ shall give ~~him~~ the child support and education suitable to ~~his~~ the child's circumstances."

Section 30. Section 40-6-221, MCA, is amended to read:

"**40-6-221. ~~Custody~~ Parenting, services, and earnings of child.** The father and mother of an unmarried minor child are equally entitled to the ~~custody~~ parenting, services, and earnings of the child. If either parent ~~be~~ is dead or unable or refuses to ~~take the custody~~ exercise parenting or has abandoned ~~his or her~~ the family, the other parent is entitled to the ~~custody~~ parenting, services, and earnings of the child, unless ~~custody~~ care of the child is determined otherwise pursuant to 40-4-221."

Section 31. Section 40-9-101, MCA, is amended to read:

"**40-9-101. Application of Montana Rules of Civil Procedure.** (1) Except as otherwise provided, the Montana Rules of Civil Procedure apply to all proceedings under this section and 40-9-102.

(2) A proceeding for ~~grandparent~~ grandparent-grandchild contact ~~visitation~~ under this section and 40-9-102 ~~shall~~ must be entitled, "In re the ~~visitation~~ grandparent-grandchild contact of ....."

(3) The initial pleading in all proceedings under this section and 40-9-102 ~~shall~~ must be denominated a petition. A responsive pleading ~~shall~~ must be denominated a response. Other pleadings ~~shall~~ must be denominated as provided in the Montana Rules of Civil Procedure."

Section 32. Section 40-9-102, MCA, is amended to read:

"**40-9-102. ~~Grandparent~~ Grandparent-grandchild contact ~~visitation rights~~.** (1) Except as provided in subsection (5), the district court may grant to a grandparent of a child reasonable ~~visitation~~ rights to contact with the child, including but not limited to ~~visitation~~ rights regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title. The department of public health and human services must be given notice of a petition for ~~grandparent~~ grandparent-grandchild contact ~~visitation~~ regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.

(2) ~~Visitation rights~~ Grandparent-grandchild contact granted under this section may be granted only upon a finding by the court, after a hearing, that the ~~visitation~~ contact would be in the best interest of the child.

(3) A person may not petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of:

(a) the child;

(b) the child's parent, guardian, or custodian; or

(c) the child's grandparent.

(4) The court may appoint an attorney to represent the interests of a child with respect to ~~visitation~~ grandparent-grandchild contact when the interests are not adequately represented by the parties to the proceeding.

(5) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. ~~Visitation rights~~ Grandparent-grandchild contact granted under this section ~~terminate~~

terminates upon the adoption of the child by a person other than a stepparent or a grandparent."

Section 33. Section 45-5-304, MCA, is amended to read:

"**45-5-304. Custodial interference.** (1) A person commits the offense of custodial interference if, knowing that the person has no legal right to do so, the person:

~~(a)~~ takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution;

~~(b) prior to the entry of a court order determining custodial rights, takes, entices, or withholds any child from the other parent when the action manifests a purpose to substantially deprive that parent of parental rights; or~~

~~(c) is one of two persons who has joint custody of a child under a court order and takes, entices, or withholds the child from the other when the action manifests a purpose to substantially deprive the other parent of parental rights~~.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) With respect to the first alleged commission of the offense only, a person who has not left the state does not commit an offense under this section if the person voluntarily returns the child, incompetent person, or other person to lawful custody ~~prior to~~ before arraignment. With respect to the first alleged commission of the offense only, a person who has left the state does not commit an offense under this section if the person voluntarily returns the child, incompetent person, or other person to lawful custody ~~prior to~~ before arrest."

NEW SECTION. **Section 34. Parenting interference.** (1) A person commits the offense of parenting interference if, knowing that the person has no legal right to do so, the person:

(a) before the entry of a court order determining parenting rights, takes, entices, or withholds a child from the other parent when the action manifests a purpose to substantially deprive that parent of parenting rights; or

(b) is one of two persons who has parenting authority of a child under a court order and takes, entices, or withholds the child from the other when the action manifests a purpose to substantially deprive the other parent of parenting rights.

(2) A person convicted of the offense of parenting interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) With respect to the first alleged commission of the offense only, a person who has not left the state does not commit an offense under this section if the person voluntarily returns the child before arraignment. With respect to the first alleged commission of the offense only, a person who has left the state does not commit an offense under this section if the person voluntarily returns the child before arrest.

Section 35. Section 45-5-631, MCA, is amended to read:

"45-5-631. ~~Visitation interference~~ Interference with parent-child contact. (1) A person who has ~~legal custody of a minor child~~ been granted parent-child contact under a parenting plan commits the offense of ~~visitation~~ interference with parent-child contact if ~~he~~ the person knowingly or purposely prevents, obstructs, or frustrates the ~~visitation~~ rights of ~~a~~ another person entitled to ~~visitation~~ parent-child contact under an existing court order.

(2) A person convicted of the offense of ~~visitation~~ interference with parent-child contact shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 5 days, or both."

Section 36. Section 45-5-632, MCA, is amended to read:

"45-5-632. Aggravated ~~visitation~~ interference with parent-child contact. (1) A person who commits the offense of ~~visitation~~ interference with parent-child contact by changing the residence of the minor child ~~over whom he has legal custody~~ to another state without giving written notice as required in 40-4-217, unless the notice requirement has been precluded under [section 19], or without written consent of the person entitled to ~~visitation~~ parent-child contact pursuant to an existing court order commits the offense of aggravated ~~visitation~~ interference with parent-child contact.

(2) A person convicted of the offense of aggravated ~~visitation~~ interference with parent-child contact shall be fined an amount not to exceed $1,000 or be imprisoned in the state prison for a term not to exceed 18 months, or both."

Section 37. Section 45-5-633, MCA, is amended to read:

"45-5-633. Defenses to ~~visitation~~ interference with parent-child contact and aggravated ~~visitation~~

interference with parent-child contact. (1) A person does not commit the offense of ~~visitation~~ interference with parent-child contact or aggravated ~~visitation~~ interference with parent-child contact if ~~he~~ the person acts:

(a) with the consent of the person entitled to ~~visitation~~ parent-child contact;

(b) under an existing court order; or

(c) with reasonable cause.

(2) Return of the child ~~prior to~~ before arrest is a defense only with respect to the first commission of ~~visitation~~ interference with parent-child contact or aggravated ~~visitation~~ interference with parent-child contact."

NEW SECTION. **Section 38. Repealer.** Sections 40-4-222, 40-4-223, 40-4-224, 40-6-222, 40-6-223, 40-6-224, and 40-6-231, MCA, are repealed.

NEW SECTION. **Section 39. Codification instruction.** (1) [Sections 18 and 19] are intended to be codified as an integral part of Title 40, chapter 4, part 2, and the provisions of Title 40, chapter 4, part 2, apply to [sections 18 and 19].

(2) [Section 34] is intended to be codified as an integral part of Title 45, chapter 5, part 6, and the provisions of Title 45, chapter 5, part 6, apply to [section 34].

NEW SECTION. **Section 40. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before October 1, 1997.

NEW SECTION. **Section 41. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 42. Applicability.** [This act] applies to proceedings begun after October 1, 1997.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0231, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising domestic relations statutes regarding the custody and visitation of children involved in a marriage dissolution; revising applicable terminology; requiring adoption of a final parenting plan that includes specific provisions in the best interests of the child, an option for dispute resolution or mediation except in cases of proven child or spousal abuse, and an option for periodic review of the parenting plan.

ASSUMPTIONS:
1. If the adoption of a final parenting plan replaces any elements of an interim parenting plan, including any child support provisions in that interim parenting plan, then any amount due under the interim parenting plan becomes null and void. This will require the return of funds collected under the interim plan on cases the Child Support Enforcement Division (CSED) services.
2. It is unknown how many CSED cases this will impact, but it is anticipated it will have a minor negative effect on CSED collections. For purposes of this fiscal note, assume that the department will absorb any impact within existing resources.

FISCAL IMPACT:
None.

Dave Lewis 1-16-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BEVERLY BARNHART, PRIMARY SPONSOR DATE

Fiscal Note for HB0231, as introduced

HB 231

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on January 29, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 231, HB 272, HB 273, POSTED 1/21/97

HEARING ON

Opening Statement by Sponsor: REP. DAN MC GEE
{Tape: 1; Side: A; Approx. Time Count: 1.7; Comments: This set of minutes is recorded on 90-minute tapes.}

Proponents' Testimony:

JUDGE MIKE SALVAGNI **EXHIBIT 1**
{Tape: 1; Side: A; Approx. Time Count: 3.3}

SEN. SUE BARTLETT
{Tape: 1; Side: A; Approx. Time Count: 18.4}

BETH BAKER **EXHIBIT 2**
{Tape: 1; Side: A; Approx. Time Count: 27.2}

REP. JOHN JOHNSON
{Tape: 1; Side: A; Approx. Time Count: 32.6}

GENE KISER, Board of Crime Control **EXHIBIT 3**
{Tape: 1; Side: A; Approx. Time Count: 34.8}

DAVE OHLER, Department of Corrections
{Tape: 1; Side: A; Approx. Time Count: not recorded}

MIKE MC GRATH, Montana County Attorneys' Association
{Tape: 1; Side: A; Approx. Time Count: 37.9}

Questions From Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 42.3-Tape 1; Side B; 34.2; Comments: REP. WYATT assumed the chair in REP. CLARK's absence.}

Closing by Sponsor: **REP. MC GEE**
{Tape: 1; Side: B; Approx. Time Count: 34.2 - Tape 2; Side A; 1.3; Comments: REP. CLARK resumed the chair.}

HEARING ON HB 231

Opening Statement by Sponsor: **REP. BEVERLY BARNHART**
{Tape: 2; Side: A; Approx. Time Count: 2.7}

Proponents' Testimony:

MARS SCOTT, Montana State Bar; Domestic Relations Study Commission
{Tape: 2; Side: A; Approx. Time Count: 6.3}

CORBIN HOWARD, Attorney, Domestic Relations Study Commission
{Tape: 2; Side: A; Approx. Time Count: 9.3}

SARAH BAXTER, Ph.D., Psychologist
{Tape: 2; Side: A; Approx. Time Count: 22.7}

ANDREW MALCOLM, Governor's Office
{Tape: 2; Side: A; Approx. Time Count: 27.5}

STEPHANIE SCHMIDT
{Tape: 2; Side: A; Approx. Time Count: 29.6}

TIM KUNTZ, Montana Trial Lawyers' Association **EXHIBIT 4**
{Tape: 2; Side: A; Approx. Time Count: 31.3}

GAIL GOHEEN, Domestic Relations Commission
{Tape: 2; Side: A; Approx. Time Count: 32.}

CAROL MITCHELL **EXHIBIT 5**
{Tape: 2; Side: A; Approx. Time Count: 35.3; Comments: REP. WYATT took the chair in the absence of Chairman CLARK.}

Opponents' Testimony:

NEIL HAIGHT
{Tape: 2; Side: A; Approx. Time Count: 39.3; Comments: Mr. Haight signed the visitor register for HB 272 in error.}

VIVIAN MARIE, Attorney **EXHIBIT 6 and 6A**
{Tape: 2; Side: B; Approx. Time Count: 0.5; Comments: Portions of these exhibits were read into the record.}

JOHN HOLLOW, Attorney **EXHIBIT 7**
{Tape: 2; Side: B; Approx. Time Count: 3.9; Comments: Exhibit 7 was requested by the committee and was presented after the close of the hearing.}

Proponents' Testimony:

KERRY NEWCOMER, Domestic Relations Study Commission
{Tape: 2; Side: B; Approx. Time Count: 11.4; Comments: REP. CLARK resumed the chair; opponents relinquished the balance of their time for continuation of proponents' testimony.}

ROB TAMELER, Domestic Relations Study Commission
{Tape: 2; Side: B; Approx. Time Count: 16.3}

KYLE CUNNINGHAM, Attorney, Domestic Relations Study Commission
{Tape: 2; Side: B; Approx. Time Count: 20.2}

HANK HUDSON, Administrator, Child and Family Services, Department of Public Health and Human Services (DPHHS)
{Tape: 2; Side: B; Approx. Time Count: 22.3}

MARY ALICE COOK, Independent Advocate for Children and Families
{Tape: 2; Side: B; Approx. Time Count: 23.6}

EXHIBIT 8
[Comments: This exhibit was presented after the close of the hearing.}

Questions From Committee Members and Responses:
{Tape: 2; Side: B; Approx. Time Count: 24.2-Tape 3; Side A; 20.3.}

Closing by Sponsor: **REP. BARNHART**
{Tape: 3; Side: A; Approx. Time Count: 20.4; Comments: Rep. Wyatt assumed the chair in the absence of Rep. Clark.}

HEARING ON HB 273

Opening Statement by Sponsor: **REP. MC GEE**

EXHIBIT 4
DATE 1/29/97
HB 231

Directors:

Wade Dahood
Director Emeritus
Elizabeth A. Best
J. Randall Bishop
Michael D. Cok
Mark S. Connell
Michael W. Cotter
Patricia O. Cotter
Karl J. Englund
Victor R. Halverson, Jr.
Gene R. Jarussi
Micheal F. Lamb
Peter M. Meloy
James P. Molloy
John M. Morrison
Gregory S. Munro
David R. Paoli

Montana Trial Lawyers ASSOCIATION

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Officers:

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Patricia O. Cotter
Secretary-Treasurer
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Governor
David R. Paoli
Governor

January 29, 1997

Rep. Bob Clark, Chair
House Judiciary Committee
Room 312-1, State Capitol
Helena, MT 59620

RE: House Bill 231

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's support for HB 231, which makes important improvements in Montana's child custody laws.

MTLA also endorses the amendments to Sections 10, 23, and 26 of the bill recommended by Bozeman attorney Jennifer Bordy in her accompanying January 27 letter.

Again, thank you for this opportunity. Please contact me if I can provide additional information or assistance.

Respectfully,

Russell B. Hill
Executive Director

Jennifer Wendt Bordy
Attorney at Law

1822 West Lincoln, Suite B
Bozeman, Montana 59715

(406) 585-8756
FAX: (406) 585-0240

January 27, 1997

Rep. Bob Clark, Chair
House Judiciary Committee
Room 312-1
State Capitol
Helena, Montana 59620

Re: House Bill 231

Dear Rep. Clark and Members of the House Judiciary Committee:

I am a Bozeman attorney who extensively practices family law. The two words which cause the most needless and painful litigation in Montana are "sole" and "joint" as they relate to child custody.

The reality of divorce proceedings is that one if not both parents use the children as weapons. It does not matter which parent wanted the divorce, or why. Quite often a parent recognizes that the other will be awarded primary custody, but the custodian still wants to deny "joint" custody. I have had many cases where both parties agreed on the visitation schedule, but not the designation.

The reality of "joint" custody also is hardly different from sole custody. It no longer results in equally shared custody, which gained popularity only briefly after the joint custody concept emerged into American divorce law. Mental health professionals and courts have disgarded the idea as too difficult and unsettling for children to bounce back and forth between "homes."

Although Montana law currently provides that a parent is entitled to a child's medical and school records, the reality is that most schools and health professionals will not release them without the consent of the custodial parent, which defeats the purpose for which the law was enacted.

I have reviewed House Bill 231 and feel very strongly that it addresses these problems exceptionally well. Section 19(5) is particularly appropriate, as another way in which the custodial parent attempts to exercise control over the other parent is to insist on approving babysitters, etc. However, I suggest a few changes to the proposal:

1. Section 10, amending 40-4-201(1):

a. Please do not call it a "separation" agreement, as that is confusing if it is actually a dissolution agreement. Simply calling it an agreement should suffice.

b. This section appears to exclude the possibility of settling only some of the issues before trial. Please do not exclude this possibility. The less issues you have to try, the better!

2. Section 23, amending 40-4-220(2): It is terribly easy for a parent to obtain an *ex parte* custody order based upon false accusations. For an *ex parte* order only, I recommend that the child must have been the victim of actual abuse or neglect. Because a hearing is provided very quickly upon a temporary protective order, that should be a sufficient alternative protection for both the child who is subjected to threatened abuse and the child who would otherwise be snatched away from an innocent parent, causing unlimited damage to the child.

3. Section 26, amending 40-4-226(2), MCA: Please leave in subsection (2). One divorce class in Bozeman suggests custody arrangements based solely on the age of the child. It does not consider the more important factor of the amount of time the child spent with the non-primary caretaker before the parties separated. Parents have indeed attempted to persuade the judge to limit visitation based upon the class's recommendations. This is hearsay, foreclosing the attorney from cross-examining the actual maker of the statement and pointing out the fallacy of the suggested arrangement under the circumstances present in the case. This subsection at least helps to limit that possibility.

Other than these few changes, I strongly support the passage of HB 231. It will go a long way toward making divorce in Montana a less scarring and litigious process!

Thank you for your consideration of my comments and suggestions.

Sincerely,

Jennifer Bordy

Jennifer Bordy

EXHIBIT 5
DATE 1/29/97
HB 231

TESTIMONY OF CAROL MITCHELL IN FAVOR OF H.B. 231
January 28, 1997

Personal Experience: I began working with young children 30 years ago in Great Falls with the Head Start program. For 14 years I was a family law practitioner. I represented parents and children in custody and dissolution of marriage disputes. I closed my successful private practice in 1991. One of the principal reasons was my increasing dissatisfaction with using the adversary process of the courts to resolve family disputes.

Litigation Inappropriate for Many Parents and Children. By its very nature, the judicial process adversely affects both parents and children in too many cases. The focus is on the past and on the faults of the other parent, not the future and the value of the other parent to the child. Divorcing parents are not given an opportunity to learn the important new skills of parenting and communicating with a former spouse. And **the ability to communicate with the other parent** regarding the myriad of decisions needed to raise a child **may be the single most important factor in determining the successful adjustment of the child to her/his parent's divorce.**

Too often, the parent's divorce becomes the divorce of children from a parent.

Children Benefit from Two Parents Communicating and Focusing on Them. Judith Wallerstein, Ph.D., who has conducted the longest study of the effects of divorce on children, over 20 years now, tells us that the *frequent and continuing* contact between a child and both parents following the separation and divorce, is the most important factor in the child's successful adjustment.

My entire practice is now limited to mediation, principally with divorcing parents. Mediation is a process which requires training. At its most fundamental level it is assisted-negotiation by a neutral, independent third party. For divorcing parents, it is an opportunity to learn to communicate with their soon-to-be former spouse for the betterment or the children. This requires new communication skills, new expectations, new rules. Mediation sessions offer the parents an opportunity to learn and practice these new skills in a supervised and safe setting. The child is the focus. The future is the focus, not the grievances of the past.

How H.B 231 Helps. H.B. 231 encourages parents and the courts to use mediation and cooperation in resolving parenting disputes in a number of ways:

1. It removes the inflammatory terms: "custody"and "visitation" so that parents are no longer divorcing and needlessly losing custody of their children.
2. Requires dispute resolution procedures to be part of a parenting plan.(Section 19, 3, d)
3. Imposes sanctions for failing to use these procedures. (Section 40-4-212, 3, b.)
4. Encourages courts to use education and mediation to resolve parenting disputes. (Section 40-4-215,2 and Section 19, 4)

My last 30 years of experience and research reveals that parents who mediate their

divorce conflicts:

-much higher compliance rates with terms of the divorce agreement, including making child support payments..
60% compliance with traditional decrees.
83-114% compliance with mediated agreements.
-fewer seek to modify the decree: 13% as compared to 35%.
-engage in less violence.
-incur lower expenses both financially and emotionally.
-have a much higher rate of satisfaction with the process.
77% satisfied with mediation as compared to 40% with litigation.
-report more harmonious relationships after the divorce.

And there is a growing indication in the research that children of parents who mediate adjust better to the divorce, do better in school and experience fewer problems with law enforcement.

Summary. H.B. 231, by supporting mutual decision-making by parents and encouraging non-litigious dispute resolution, is a step in the right direction. It will benefit Montana's children, as well as their parents.

EXHIBIT 6
DATE 1/29/96
HB 231

REPRESENTATIVE CLARK, MEMBERS OF THE COMMITTEE, MY NAME IS VIVIAN MARIE, I REPRESENT THE PEOPLE'S LAW CENTER, AND I RISE IN OPPOSITION TO HB 231. I AM AN ATTORNEY PRACTICING IN MONTANA SINCE 1982, WITH AN EMPHASIS ON FAMILY LAW.

I THOUGHT LONG AND HARD ABOUT WHAT POSITION TO TAKE ON THIS BILL. REPRESENTATIVE BARNHART AND OTHER SUPPORTERS HAVE TRIED EARNESTLY TO ACCOMODATE MY CONCERNS. BUT THE LONGER WE SPOKE, THE MORE CLEAR IT BECAME THAT WE HOLD VERY DIFFERENT IDEAS ABOUT WHAT ROAD WILL TAKE US TO THE GOAL OF STABILITY FOR CHILDREN.

I WHOLEHEARTEDLY APPROVE OF PARENTING PLANS IN THE SENSE THAT THEY REQUIRE PARENTS TO THINK THROUGH VARIOUS DIFFICULT ISSUES IMMEDIATELY, INSTEAD OF WAITING FOR THEM TO ARISE. I AM ALSO FULLY IN FAVOR OF THE PARENT EDUCATION ASPECTS OF THE BILL. BOTH OF THESE PROVISIONS SHOULD HELP DECREASE FUTURE CONFLICTS. THE CHILD WELFARE EXPERTS I KNOW TELL ME THAT IT IS THE CONFLICT THAT IS MOST HARMFUL TO CHILDREN.

MY MAIN OBJECTION TO THE BILL OVERALL IS THAT IT WILL MAKE IT EASIER TO GET A HEARING TO MODIFY A PARENTING PLAN, IN OTHER WORDS, IT IS EASIER TO BRING A CONFLICT TO COURT. I THINK THAT'S BAD FOR CHILDREN. TO BE SPECIFIC, THEY WOULD CHANGE SECTION 40-4-219 SO THAT A PARENT NEED NO LONGER PROVE AS A THRESHOLD QUESTION THAT THERE IS A GOOD REASON TO CHANGE A CHILD'S SITUATION.

I AM PARTICULARLY CONCERNED THAT REPEATED RETURNS TO THE COURTROOM WILL PLACE AN INTOLERABLE BURDEN OF LEGAL FEES ON THE ONE DEFENDING AGAINST THOSE ACTIONS. THIS IS A HEAVY BURDEN NOT ONLY FOR THE POOR BUT ALSO FOR MIDDLE INCOME FAMILIES. I WOULD PROPOSE THAT, BEFORE AN ACTION FOR CHANGE COULD PROCEED, THE JUDGE WOULD HOLD A PRELIMINARY HEARING TO DETERMINE THREE THINGS:

FIRST, IS THERE SOLID GROUND FOR REQUESTING THE CHANGE?

SECOND, SHOULD THE PARTIES BE REFERRED TO A MEDIATOR?

THIRD, AND HIGHLY IMPORTANT, WHO SHOULD BEAR THE COSTS INVOLVED, INCLUDING FEES FOR ATTORNEYS, MEDIATORS, INVESTIGATORS OR GUARDIANS AD LITEM?

THE PROPOSED LEGISLATION, IN AN EFFORT TO PREVENT CONFLICT, MAKES SWEEPING CHANGES IN LANGUAGE. SOME YEARS AGO, WE ALL HOPED THAT THE CONCEPT OF JOINT CUSTODY WOULD ACCOMPLISH THE SAME THING. BUT AS LONG AS A CHILD WILL LIVE PRIMARILY WITH ONE PARENT (AND FOR MOST CHILDREN, ESPECIALLY AFTER SCHOOL AGE, THIS IS THE ONLY REASONABLE ARRANGEMENT), THE OTHER PARENT WILL BE ASKED TO CONTRIBUTE MORE FINANCIALLY. THIS MONEY MOTIVE, IN MY EXPERIENCE, FUELS MANY CUSTODY DISPUTES. UNFORTUNATELY, THIS BILL DOESN'T CHANGE THAT REALITY.

SO FOR ALL OUR EFFORTS TO TINKER WITH THE BILL TO MEET MY CONCERNS, THE FACT REMAINS THAT THE PROPONENTS BELIEVE IT IS CURRENTLY TOO HARD TO CHANGE A CHILD'S SITUATION, AND I BELIEVE THEY WOULD MAKE IT TOO EASY.

I SUBMIT WRITTEN DETAILS OF MY CONCERNS, AND

I THANK YOU FOR YOUR TIME AND ATTENTION.

EXHIBIT 6A
DATE 1/29/96
HB 231

IN OPPOSITION TO HB 231

Submitted by: Vivian Marie
People's Law Center
P.O. Box 6208
Helena, Montana 59604
(406) 443-7357

STANDARD FOR MODIFICATION

The most important change in Montana's family law is made to M.C.A. Section 40-4-219. Right now, in order to bring an action to modify custody, a parent has to show initially that a substantial change has occurred since the last decision was made, and in addition must show that one of the listed factors applies:

(1) the parties agree on the change; (making it easy for folks who do agree that a change is necessary for the child)

(2) the child has as a matter of fact, already been integrated into the other parent's household with the acquiesence of the custodian;

(3) the present situation seriously endangers the child **and the harm caused by the current situation outweighs the harm caused by the change;** (a statement that the legislature understands that any major change, particularly of primary caregiver, brings some negative consequences for a child)

(4) the child is over 14 years of age and desires the change;

(5) the custodial parent has willfully and consistently interfered with visitation; or

(6) the custodian intends to move the child out of state (this bill would change this to any change over 30 miles)

I think that this current law gives plenty of leeway for change that is beneficial, but does put up a barrier to continued, unfounded actions.

The proposed bill would take away the threshold. A parent can allege at any time that a change is in the best interests of the child, and the court will hear the matter. When hearing it, the court may consider the six things listed above, but they are now only factors to think about. Serious endangerment is gone altogether.

LOSS OF PRESUMPTIONS

Last session, this legislature created some presumptions in terms of what is in a child's best interests. These included paying for birth costs and later for support, if able. They included keeping a child with its accustomed primary caregiver. They were rebuttable presumptions, so there was room for judicial discretion. Still, as presumptions they carried some weight. They were the legislature's policy guides to judges.

The proposed legislation demotes these presumptions to mere factors for consideration in a long list of others in Section 40-4-212. Clearly this change weakens the policies considerably.

PENALTIES FOR CHANGING A CHILD'S RESIDENCE

Right now, a parent who wants to move a child out of state must give notice to the other parent or obtain that parent's written

consent. If the noncustodial parent disagrees with the move, he or she may bring a court action to modify custody. In practice, there is some real variation from judge to judge as to whether they will approve of moving a child. In general, the successful "mover" must show a real plan: the change is necessary because of a job or college, the parent has planned ahead for housing, child care and other security issues.

If the moving parent does not give proper notice, this is possibly grounds for changing custody, it is considered interference with visitation and/or custody rights of the other parent and thus inherently not in the best interests of the child. In addition, this behavior is now a felony carrying prison time.

The proposed legislation would change the moving limit from the state of Montana to 30 miles. I believe this is too restrictive and, again, increases the opportunities for dispute. Montana distances being what they are, the next town may easily be more than thirty miles away. A move within your own county may easily exceed 30 miles. This provision would apply even if the visiting parent lived two hundred miles away to begin with.

There was valid legal ground for using the state as a measure. When a parent leaves the state, enforcement of the Montana decree becomes more difficult, procedurally and substantively. Moves instate, on the other hand, pose no additional legal burden for the noncustodial parent.

While the legislation kept the criminal statute limits at the state line, the reference in the criminal section back to Section 40-4-217 makes it questionable whether the 30 mile limit is brought back into the equation. We will have to be careful to give clear notice to parents about the criminal law, because no one's common sense will tell them that a 30 mile move is criminal.

CONCLUSION

I believe this bill sweeps far too broadly in its effort to do away with the concept of custody. The legislature can require the filing of parenting plans and parent education without doing violence to the entire Marriage and Divorce Act.

Our current code comments emphasize stability: making a decision and staying with it unless there's a very good reason to change. It makes continuity of care a priority, very deliberately and explicitly. The proponents of this bill believe it is too hard to make changes. They are asking you to reverse a vital policy underlying the entire code.

I ask you to take a careful look at all the changes they make, and to maintain current standards protecting stability.

EXHIBIT 7
DATE 1/29/97
HB 231

JOHN L. HOLLOW

Attorney at Law

318 E. Sixth Avenue
Helena, MT 59601
(406)443-5790
(406)443-5791 (FAX)

January 30, 1997

House of Representatives
Committee on the Judiciary
Capitol Building
Helena, MT 59601

Re: House Bill No, 231

Greetings Mr. Chairman

Responding to Representative Grimes request, I enclose amendments that address the three issues raised by the testimony of the opponents, more properly termed, proponents with suggestions for this committee's consideration. I strongly support the concept of parents being urged to continue, or to begin, to communicate and to plan for the least detriment to the children as the result of the parents not living together. This bill is a giant step in that direction and should be passed. Please do not bog the bill down because of my comments. My intent was, and is, only to bring to your attention two choices that were made by the drafters of the legislation that differ from recent choices made by this body.

Choice One. Should any remnants of the presumption of continuity of primary care remain? The old subsection, M.C.A. Section 40-4-212(3)(a), is merely the presumption the mother should have primary care of the children rewritten about two years ago. As drafted in Section 14, this bill levels the playing field and continuity of care is a listed item, as opposed to a presumption. It will be up to the mother to find a child development specialist to give weight to her argument. In vogue now is the father, a product of our search for reasons why "inner city" boys and girls are not faring well. I do not question the importance of fathers. I merely bring to your attention that the choice made by the drafters will make it easier to

take from the mother the only thing that has been important to her since the child's birth. The drafters have made this choice with strong feelings and support from the child development community that removing the presumption may well produce a result that is less detrimental to the child. Maintaining some semblance of a presumption is found in Exhibit A.

Second Choice. The current law regarding a custodial parent moving allows for two interpretations. Again, clarifying that area must be done and this bill does it. The family law committee chose to make a move more than 30 miles trigger a reevaluation of the parenting plan. The bills repeals M.C.A. Section 40-6-231, the presumption in favor of the primary caretaker's choice to move, which was a presumption in favor of the mother relocating. In Montana, particularly in Missoula courts and the Montana Supreme Court, the section meant little. A mother is again asked to choose a life for herself, employment with benefits, family support, perhaps a return to her roots, or her child. She can not afford the fees, and she may not find support amongst the professionals, to aid her choice of moving. At this stage of the child's development, according to the professionals, middle school friends are just as important as either parent, thus the parent remaining in town would be more likely to gain or maintain parenting time. Maintaining some semblance of a presumption is found in Exhibit B.

A partial solution may lay in educating women and men about child development; specifically, how a childs emotional meeds may clash with a parents financial or educational prospects. Ideally, this educationwould occur in middle school, not the month they file for divorce. Women should know in advance of pregnancy that starting at age three a child needs to begin separating from her. Should she become pregnant in high school, the father must go to work for the pulp mill and she must begin to sacrifice. As drafted, the mother will, in the best interest of the child, continue to be asked to sacrifice until the child is eighteen. It is difficult to explain to a thirty five year old woman and mother with hopes for a promotion in Salt Lake, that her interests and those of her child conflict, and that perhaps their seperation is most advisable. At least, therefore, make it clear to the district court to level the financial playing field in advance of the involvement of the child development professionals, so the mother has access to someone to testify for her and for her approach to the child's best interest. More importantly, early sharing of financial resources may enable her to have access to a child development professional who will help her understand the child's best interest and help her let go of the child, should she decide to move or should her parenting time need to be greatly reduced. Then everyone wins, or at least loses less bitterly. A proposal to more clearly direct the district court to order the sharing of financial resources in advance of litigation is found in Exhibit C.

Again, I strongly urge passage of this legislation.

Regards,

John L. Hollow

A.

(2) A de facto ~~custody~~ parenting arrangement, in the absence of a prior ~~custody~~ parenting decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219.

(3) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:

(a) ~~Custody should be granted to the parent who has provided most of the primary care during the child's life.~~ The apportionment of care during the preceding relevant years of the child's life should continue.

~~(b)~~ A ~~custody~~ parenting plan action brought by a parent within 6 months after a child support action against that parent is vexatious.

(b) A motion to amend a final parenting plan pursuant to 40-4-219 is vexatious if a parent seeks to amend a final parenting plan without making a good faith effort to comply with the provisions of the parenting plan or with dispute resolution provisions of the final parenting plan.

~~(4) The following are rebuttable presumptions:~~

~~(a) A knowing failure to pay birth-related costs that the person is able to pay is not in the best interest of the child.~~

~~(b) Failure to pay child support that the person is able to pay is not in the best interest of a child in need of the child support.~~"

Section 15. Section 40-4-213, MCA, is amended to read:

"**40-4-213.** ~~**Temporary orders**~~ **Interim parenting plan.** (1) A party to a ~~custody~~ parenting proceeding may move for ~~a temporary custody order~~ an interim parenting plan. The motion must be supported by an affidavit as provided in 40-4-220(1). The court may ~~award temporary custody~~ adopt an interim parenting plan under the standards of 40-4-212 after a hearing or under the standards of 40-4-212 and 40-4-220(2) before a hearing. If there is no objection, the court may act solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any ~~temporary custody order~~ interim parenting plan is vacated unless a parent ~~or the child's custodian~~ moves that the proceeding continue as a ~~custody~~ parenting proceeding and the court finds, after a hearing, that the circumstances of the parents and the best ~~interest~~ interests of the child require that a ~~custody decree~~ parenting plan be ~~issued~~ adopted.

(3) If a ~~custody~~ parenting proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any ~~temporary custody order~~ interim parenting plan is vacated.

B

Section 22. Section 40-4-219, MCA, is amended to read:

"**40-4-219.** ~~**Modification**~~ **Amendment of parenting plan -- mediation.** (1) The court may in its discretion ~~modify~~ amend a prior ~~custody decree~~ parenting plan if it finds, upon the basis of facts that have arisen since the prior ~~decree~~ plan or that were unknown to the court at the time of entry of the prior ~~decree~~ plan, that a change has occurred in the circumstances of the child ~~or the child's custodian~~ and that the ~~modification~~ amendment is necessary to serve the best interest of the child. ~~and if it further finds that~~ In determining the child's best interest under this section, the court may, in addition to the criteria in 40-4-212, also consider whether:

(a) the ~~custodian agrees~~ parents agree to the ~~modification~~ amendment;

(b) the child has been integrated into the family of the petitioner with consent of the ~~custodian~~ parents;

(c) ~~the child's present environment endangers seriously the child's physical, mental, moral, or emotional health and that the harm likely to be caused by a change of environment is outweighed by its advantages to the child;~~

~~(d)~~ the child is 14 years of age or older and desires the ~~modification~~ amendment;

~~(e)~~(d) ~~the custodian~~ one parent has willfully and consistently:

(i) ~~refuses~~ refused to allow the child to have any contact with the ~~noncustodial~~ other parent; or

(ii) ~~attempts~~ attempted to frustrate or deny contact with the child by the ~~noncustodial parent's exercise of visitation rights~~ other parent; or

~~(f)~~(e) ~~the custodial parent~~ one parent has changed or intends to change the child's residence ~~to another state~~ in a manner that significantly affects the child's contact with the other parent. A change in residence of more than 30 miles from the child's present residence constitutes a significant effect on parent-child contact.

(2) A court may modify a de facto ~~custody~~ parenting arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume ~~the custodian~~ a parent is not acting in the child's best interest if the ~~custodian~~ parent does any of the acts specified in subsection ~~(1)(e)~~ (1)(d) or (8).

(4) The court may ~~modify~~ amend the prior ~~decree~~ parenting plan based on subsection ~~(1)(f)~~ (1)(e) to provide a new ~~visitation~~ residential schedule for parental contact with the child and to apportion transportation costs between the parents. The court must presume the apportionment of residential time, to the extent practical remains in the child's best interest

Legislative Services Division

23

Exhibit C.

professional

40-4-110. Costs ~~attorney's~~ fees. The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under chapters 1 and 4 of this title and for ~~attorney~~'s fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the ~~attorney~~, who may enforce the order in his name.

AND professional

The purpose of this section is to ensure all parties have timely AND equitable access to marital, financial resources for costs before, during, AND after proceedings herein.

EXHIBIT 8
DATE 1/29/97
HB 231

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

MARC RACICOT
GOVERNOR

LAURIE EKANGER
DIRECTOR

STATE OF MONTANA

FAX (406) 444-1370
(406) 442-7278

3075 N MONTANA, SUITE 112
PO BOX 202943
HELENA, MONTANA 59620-2943

January 14, 1997

TO: Rep. Beverly Barnhart

FROM: Mary Ann Wellbank, Administrator

RE: HB 231 - Concerns and Proposed Amendments

The Child Support Enforcement Division has reviewed HB 231, An Act Generally Revising Domestic Relations Statutes, and has a few concerns we would like to share with you.

Section 11 of the bill, amending MCA 40-4-204 deletes the bulk of subsection 8. Subsection 8 of that section is necessary for the CSED to collect child support when a parent, or other person who is legal custodian of a child, applies for our services, or the department receives a referral based on the payment of public assistance or foster care benefits. As amended in this bill, the language would say that child support shall be paid pursuant to the child support guidelines, and that is not the intent of that section. In fact, the guidelines are used to establish support, child support is not paid "pursuant to guidelines". Subsection (3) already provides that the guidelines are to be used in the establishment of a support obligation.

In LC 1007, the child support welfare reform bill, the CSED has proposed an amendment to MCA 40-4-204 that clarifies existing subsection 8, but leaves the "order to follow the child" concept intact because it is necessary to enable the CSED to collect support in those public assistance and foster care cases referred to us, as well as in the cases in which individuals apply for our services. [redacted] Of course, when individuals have applied for or are receiving Title IV-D child support enforcement services, the payments are already processed through the CSED but this new provision of federal law requires all payments, even those for non IV-D cases, to be processed through the same central payment source. Therefore, there needs to be language in the support order that the payment needs to be made to the agency authorized to receive or collect child support. I have enclosed a copy of the

Amendment to HB 231, Introduced Bill
Proposed by Department of Public Health and Human Services
Child Support Enforcement Division

1. Page 12, line 17.
Following: "support"
Insert: "obligation"

2. Page 12, line 17.
Following: "paid"
Insert: ",without need for further order of the court, to
(i) the person with whom the child resides by legal order; or
(ii) if the person with whom the child legally resides, voluntarily or involuntarily, relinquishes physical care and control of the child to another person, organization, or agency, to the person, organization or agency to whom physical care and control has been relinquished; or
(iii) if any other person, organization or agency is entitled by law, assignment or similar reason to receive or collect the child support obligation, to the person, organization or agency having the right to receive or collect the payment."

3. Page 12, line 25.
Following: "~~support~~"
Delete: "pursuant to the child support guidelines adopted under 40-5-209."

4. Page 16, line 28.
Following: "adopted."
Insert: "A child support delinquency existing at the time an interim parenting plan is vacated remains a judgment subject to collection."

5. Page 16, line 30.
Following: "vacated."
Insert: "A child support delinquency existing at the time an interim parenting plan is vacated remains a judgment subject to collection."

6. Page 17, line 2.
Following: "section."
Insert: "A child support delinquency existing at the time an interim parenting plan is vacated remains a judgment subject to collection."

amendment to 40-4-204(8) proposed by the CSED in LC 1007.

However, since the intent of HB 231 is to do away with "custody" and "visitation" language, we recognize that our amendments to 40-4-204(8), as proposed in our LC 1007, may not meet your needs for this bill. Therefore, we have drafted amendments to Section 11 that would incorporate the language we need in 40-4-204(8) without using the terms "custody" and "custodian". We hope this language would be acceptable.

If these amendments to Section 11 are used in HB 231, the CSED will have to amend its own language in LC 1007 to mirror the change. Unfortunately we have other amendments to 40-4-204 in LC 1007, so we can't simply delete that section from our bill, even if this amendment is adopted as part of HB 231.

Another concern we have is in Section 15. Section 15 as proposed, amending 40-4-213, provides that an interim parenting plan is "vacated" upon the dismissal of the proceeding for dissolution or marriage or legal separation. In the current statute, when this language is talking only about the temporary custody order, vacation of the order was appropriate. But when the interim parenting plan could include provisions for "finances to provide for the child's needs", see Sections 18 and 19 of the bill, we would like Section 15 to be clear that any unpaid child support under the interim parenting plan is still subject to collection. To that end, we propose a series of amendments to subsections 2-4 of this Section, and have included these amendments on the attached sheet.

I appreciate your consideration of these concerns and amendments. CSED Staff Attorney, Amy Pfeifer, and I would like to meet with you at your earliest convenience to discuss this proposed legislation. My direct line is 444-3338.

c: Russ Cater, Chief Counsel
Amy Pfeifer, Staff Attorney

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 1/29/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH 8:50	✓		
REP. LOREN SOFT 11:10	✓		
REP. BILL TASH	✓		

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1/29/97

BILL NO. HB231 SPONSOR(S) Rep. Barnhart

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
MARS SCOTT	MONTANA STATE BAR DOMESTIC RELATIONS STUDY COMM.	X	
KERRY NEWCOMER 619 SW HIGGINS, SUITE K, MSLA 59803	Self Dom. Rel. Study Comm.	X	
Corbin Howard, PO Box 1117 Billings, MT 59103	Self Dom. Rel. Study Comm.	X	
Kyle Cunningham	Self Dom Rel. Study Comm	X	
ROB TAMELER	Self Dom Rel. Study Comm	X	
KATHLEEN D BEELER	Self - Clerk of Dist. Ct	X	
Marvin Vomer	Mt Christian Church - Warrenton	X	
John Holland	Self		X
Gail Doheen	Domestic Relations Commissioner	X	
Sarah Baxter, Ph.D.	Self	X	
Tim Kantz	MTLA	X	
MARY ALICE COOK	Adv. for Children & Families	✓	
Stephanie Schmidt	Self	X	

PLEASE LEAVE PREPARED TESTIMONY, EXHIBITS, WITNESS STATEMENT FORMS IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

Hank Hudson

DPNHS X

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 4/29/97

BILL NO. HB 231 SPONSOR(S) Rep. Barnhart

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Mary Jo Fox	Governor	✓	
C. H. Malcolm	"	✓	
Richard Kerstein	DPHHS	✓	

PLEASE LEAVE PREPARED TESTIMONY, EXHIBITS, OUTLINES, STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 6, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: REP. BOHARSKI was excused until 10:30 AM.
REP. ELLINGSON was excused until 9:00 AM.

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted:	HB 243, HB 337, SB 103 POSTED 1/28/97	
Executive Action:	SB 103	BE CONCURRED IN
	HB 343	DO PASS AS AMENDED
	HB 231	TABLED

JAMES TRANKEL
{Tape: 1; Side: B; Approx. Time Count: 20.2}

RUSSELL HILL, Montana Trial Lawyers Association
{Tape: 1; Side: B; Approx. Time Count: 27.6}

Questions From Committee Members and Responses:
{Tape: 1; Side: B; Approx. Time Count: 28.9-Tape 2; Side A; 0.4}

Closing by Sponsor: **SEN VAN VALKENBURG**
{Tape: 2; Side: A; Approx. Time Count: 0.5}

HEARING ON HB 337

Opening Statement by Sponsor: **REP. JOHN BOHLINGER** **EXHIBIT 6**
{Tape: 2; Side: A; Approx. Time Count: 8.3}

Proponents' Testimony:

JOAN MILES, Lewis & Clark County Health Department **EXHIBIT 7**
{Tape: 2; Side: A; Approx. Time Count: 13.1}

MARY MC CUE, Montana Dental Association
{Tape: 2; Side: A; Approx. Time Count: 21.2}

MARY ALICE COOK, Advocate for Children and Families
{Tape: 2; Side: A; Approx. Time Count: 23.7}

JERRY LOENDORF, Montana Medical Association
{Tape: 2; Side: A; Approx. Time Count: 25.4}

RUSSELL HILL, Montana Trial Lawyers Association
{Tape: 2; Side: A; Approx. Time Count: 28.1}

Questions From Committee Members and Responses:
{Tape: 2; Side: A; Approx. Time Count: 28.7 - 38.5}

Closing by Sponsor: **REP. BOHLINGER**
{Tape: 2; Side: A; Approx. Time Count: 38.6}

EXECUTIVE ACTION ON HB 231

Motion: **REP. DIANA WYATT moved HB 231 DO PASS.** **EXHIBITS 8 and 9**
{Tape: 2; Side: B; Approx. Time Count: 0.2}

Discussion:
{Tape: 2; Side: B; Approx. Time Count: 0.4 - 37.4}

Motion/Vote: **REP. DUANE GRIMES moved HB 231 BE TABLED.** The motion carried 10 - 7, REPS. WYATT, MC CULLOCH, PEASE, SANDS and KOTTEL voting no. (REPS. MOLNAR, HANSON and TASH voted aye to table by proxy.)

Discussion:
{Tape: 2; Side: B; Approx. Time Count: 38.5 - end of tape.}

Motion: REP. WYATT moved that a subcommittee be formed to work out amendments to HB 231. The motion carried and Chairman Clark appointed RESP. ELLINGSON, SOFT, GRIMES and MC CULLOCH to that subcommittee.
{Tape: 3; Side: A; Approx. Time Count: 0.1}

EXECUTIVE ACTION ON SB 103

Motion: REP. AHNER moved SB 103 BE CONCURRED IN.
{Tape: 3; Side: A; Approx. Time Count: 2.6}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 4.0 - 14.3}

Vote: The motion carried 18 - 1, REP. BOHARSKI voting no.

EXECUTIVE ACTION ON HB 343

Motion: REP. AHNER moved HB 343 DO PASS. **EXHIBITS 10 and 11**
{Tape: 3; Side: A; Approx. Time Count: 17.0}

Motion/Vote: REP. GRIMES moved the amendments of 1/27/97. The motion carried 18 - 1, REP. MC GEE voting no.

Motion: REP. GRIMES moved HB 343 DO PASS AS AMENDED.

Motion: REP. ANDERSON moved further amendments to HB 343.
{Tape: 3; Side: A; Approx. Time Count: 20.8}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 21.3 - 25.9}

Vote: The motion failed by voice vote.
{Tape: 3; Side: A; Approx. Time Count: 26.5}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 27.0 - 32.3}

Motion: REP. MC GEE moved to amend HB 343 by striking "primary aggressor" in section 8.
{Tape: 3; Side: A; Approx. Time Count: 33.8}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 33.8-Tape 3; Side B; 3.5}

Vote: The motion failed by voice vote.

Motion: REP. JON ELLINGSON moved HB 343 DO PASS AS AMENDED.

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 4.7}

EXHIBIT 8
DATE
HB 231

STATE OF MONTANA
FOURTH JUDICIAL DISTRICT
MISSOULA AND MINERAL COUNTIES
MISSOULA COUNTY COURTHOUSE
200 WEST BROADWAY
MISSOULA, MONTANA 59802-4292
(406) 523-4773 • FAX: (406) 523-4789

CHAMBERS OF
JOHN W. LARSON
YOUTH COURT JUDGE

February 5, 1997

The Honorable Robert Clark
Chairman, House Judiciary Committee
State Capitol
Helena, MT 59620

RE: H.B 231

Dear Representative Clark:

Thank you for returning my call about the above-referenced bill. The Judges of the Fourth Judicial District join in support of H.B. 231 but are recommending several amendments which will increase the options available to courts for families going through dissolution. I have also spoken with the Chairman of the Domestic Relations Study Commissions, P. Mars Scott, as well as John Hollow, Esq., of Helena, who have both concurred in these amendments.

The Judges would recommend the following changes to allow flexibility in parenting plans:

(1) On page 9, line 16, following agreement strike "must" and insert "may"

(2) On page 19, line 8, following plan strike "must" and insert "may"

(3) On page 19, line 21 following plan strike "must" and insert "may"

Next, the Judges are recommending that the minimum distance for a move that would impact a parenting plan would be 100 miles rather than 30.

(4) On page 23, line 22 strike "30" and insert "100"

Next we are concerned about court-sponsored educational programs. The Judges of the Fourth Judicial District and other Judges around the state with whom I have discussed this believe it should be a court sanctioned program. The Court should have the flexibility to reimburse pro bono guardian ad litem services and/or custody evaluation or assessments as an alternate to a education program. Those amendments would appear:

(5) On page 4, lines 1 and 2, and on page 27, lines 12 and 19 where the "court-sponsored" would be changed to "court-sanctioned program, including parenting, parenting/ custody assessment, evaluation and/or guardian ad litem services"

Finally, with regard to the payment of child support, the District Judges believe under current law that their discretion for payments of child support should continue. The District Judges simply would add to page 12, line 25:

(6) On Page 12, on line 25 a comma instead of the period stating: ", unless otherwise ordered by the Court" to remedy the situation."

Again, I appreciate your courtesy in responding to my call. I am forwarding these to the House Judiciary Staff Attorney John MacMaster who I understand will probably run them by Doug Sternberg to put them in final form. I spoke with Representative Ellingson of Missoula who indicated he could move the amendments if it would assist the process.

Yours very truly,

John W. Larson

JOHN W. LARSON
District Judge

cc: John MacMaster, Esq., House Judiciary
Representative Jon Ellingson

EXHIBIT 1
DATE
HB 231

Jennifer Wendt Bordy
Attorney at Law

1822 West Lincoln, Suite B
Bozeman, Montana 59715

(406) 585-8756
FAX: (406) 585-0240

January 27, 1997

Rep. Bob Clark, Chair
House Judiciary Committee
Room 312-1
State Capitol
Helena, Montana 59620

Re: House Bill 231

Dear Rep. Clark and Members of the House Judiciary Committee:

I am a Bozeman attorney who extensively practices family law. The two words which cause the most needless and painful litigation in Montana are "sole" and "joint" as they relate to child custody.

The reality of divorce proceedings is that one if not both parents use the children as weapons. It does not matter which parent wanted the divorce, or why. Quite often a parent recognizes that the other will be awarded primary custody, but the custodian still wants to deny "joint" custody. I have had many cases where both parties agreed on the visitation schedule, but not the designation.

The reality of "joint" custody also is hardly different from sole custody. It no longer results in equally shared custody, which gained popularity only briefly after the joint custody concept emerged into American divorce law. Mental health professionals and courts have disgarded the idea as too difficult and unsettling for children to bounce back and forth between "homes."

Although Montana law currently provides that a parent is entitled to a child's medical and school records, the reality is that most schools and health professionals will not release them without the consent of the custodial parent, which defeats the purpose for which the law was enacted.

I have reviewed House Bill 231 and feel very strongly that it addresses these problems exceptionally well. Section 19(5) is particularly appropriate, as another way in which the custodial parent attempts to exercise control over the other parent is to insist on approving babysitters, etc. However, I suggest a few changes to the proposal:

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 2/6/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI 10:20	✓		✓
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON 9 AM.	✓		✓
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH 9:30	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 18, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted:	HB 528, HB 540, HB 553
	POSTED 2/14/97
Executive Action:	HB 365 DO PASS
	HB 231 DO PASS AS AMENDED

HEARING ON HB 528

Opening Statement by Sponsor: **REP. JACK WELLS** **EXHIBIT 1**
{Tape: 1; Side: A; Approx. Time Count: 3.9}

REP. LIZ SMITH
{Tape: 3; Side: A; Approx. Time Count: 8.1 Comments: This witness did not sign in.}

Opponents' Testimony:

RUSSELL HILL, Montana Trial Lawyers Association **EXHIBIT 28**
{Tape: 3; Side: A; Approx. Time Count: 8.9}

Informational Testimony:

BILL GIANOULIAS, Department of Administration
{Tape: 3; Side: A; Approx. Time Count: 10.4; Comments: This witness did not sign in.}

Questions From Committee Members and Responses:
{Tape: 3; Side: A; Approx. Time Count: 13.4 - 21.4}

Closing by Sponsor: **REP. STOVALL** **EXHIBIT 29**
{Tape: 3; Side: A; Approx. Time Count: 21.5}

EXHIBIT 30
{Comments: This exhibit was distributed during the hearing, but it is unclear who supplied it.}

EXECUTIVE ACTION ON HB 365

Motion: **REP. GRIMES moved HB 365 DO PASS.**
{Tape: 3; Side: A; Approx. Time Count: 25.2}

Discussion: **EXHIBIT 31**
{Tape: 3; Side: A; Approx. Time Count: 25.3 - 27.5}

Motion: **REP. ANDERSON moved a conceptual amendment.**
{Tape: 3; Side: A; Approx. Time Count: 27.6}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 27.6 - 36.2}

Vote: The motion failed by voice vote.
{Tape: 3; Side: A; Approx. Time Count: 36.3}

Motion/Vote: **REP. MOLNAR moved HB 553 DO PASS.** The motion carried 12 - 8; REPS. WYATT, MC CULLOCH, PEASE, SANDS, KOTTEL, ANDERSON, ELLINGSON and HURDLE voting no.

EXECUTIVE ACTION ON HB 231

Motion/Vote: **REP. GRIMES moved HB 231 be reconsidered.** The motion carried 16 - 3; REPS. SMITH, MC GEE and BOHARSKI voting no. *{Tape: 3; Side: B; Approx. Time Count: 1.1; Comments: Prior to this action there was discussion of the bill and proposed amendments from 39.0 on Side A to this point on Side B.}*

Motion: **REP. GRIMES moved HB 231 DO PASS.**

Motion/Vote: **REP. GRIMES moved amendments.** **EXHIBIT 32**
The motion carried 20 - 0.

Motion: **REP. GRIMES moved to further amend page 20 by striking subsection 5.**

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 4.4}

Motion/Vote: **REP. GRIMES moved a substitute amendment to modify the previous amendment.** The motion carried 20 - 0.

Motion: **REP. AHNER moved HB 231 DO PASS AS AMENDED.**
{Tape: 3; Side: B; Approx. Time Count: 5.6}

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 5.7 - 9.8}

Vote: The motion carried 14 - 6; REPS. MC GEE, SMITH, BOHARSKI, CURTISS, BERGMAN and CLARK voting no.
{Tape: 3; Side: B; Approx. Time Count: 10.0}

Motion/Vote: **REP. TASH moved to adjourn.** The motion carried by unanimous voice vote.

EXHIBIT 32
DATE 2/18/97
HB 231

Amendments to House Bill No. 231
Introduced Reading Copy

Requested by HB 231 Subcommittee
For the Committee on Judiciary

Prepared by Doug Sternberg
February 13, 1997

1. Title, line 16.
Strike: "COURT-ORDERED"
Insert: "COURT-SANCTIONED"

2. Title, line 21.
Following: "40-4-109,"
Insert: "40-4-110,"

3. Page 4, line 1.
Strike: "court-sponsored"
Insert: "court-sanctioned"

4. Page 8.
Following: line 25
Insert: "**Section 9.** Section 40-4-110, MCA, is amended to read:

"**40-4-110. Costs -- ~~attorney's~~ professional fees.** (1) The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under chapters 1 and 4 of this title and for ~~attorney's~~ professional fees, including sums for legal and professional services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the ~~attorney~~ professional, who may enforce the order in ~~his~~ the professional's name.

(2) The purpose of this section is to ensure that both parties have timely and equitable access to marital financial resources for costs incurred before, during, and after a proceeding under chapters 1 and 4 of this title.""
Renumber: subsequent sections

5. Page 9, line 16.
Strike: "must"
Insert: "may"

6. Page 9, line 17.
Strike: "19"
Insert: "20"

7. Page 12, line 17.
Following: "support"
Insert: "obligation"
Following: "paid"
Insert: ", without need for further court order:
(i) to the person with whom the child resides by legal

order;
(ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical care and control of the child to another person, organization, or agency, to the person, organization, or agency to whom physical custody has been relinquished;
(iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason to receive or collect the child support obligation, to the person, organization, or agency having the right to receive or collect the payment; or
(iv) to the court for the benefit of the minor child"

8. Page 12, line 25.
Strike: "pursuant to the child support guidelines adopted under 40-5-209"

9. Page 13, line 26.
Strike: "authority"

10. Page 14, line 14.
Strike: "authority over"
Insert: "of"

11. Page 14, line 18.
Strike: "authority"

12. Page 14, line 20.
Strike: "authority"
Insert: "of the child"

13. Page 14, line 24.
Strike: "authority"

14. Page 14, line 26.
Strike: "authority"

15. Page 15, line 5.
Strike: "**interests**"
Insert: "interest"

16. Page 15, line 6.
Strike: "interests"
Insert: "interest"

17. Page 15, line 7.
Following: "factors,"
Strike: "including"
Insert: "which may include"
Following: "but"
Insert: "are"

18. Page 16, line 28.
Following: "adopted."
Insert: "A child support delinquency existing at the time that an

interim parenting plan is vacated remains a judgment subject to collection."

19. Page 16, line 30.
Following: "vacated."
Insert: "A child support delinquency existing at the time that an interim parenting plan is vacated remains a judgment subject to collection."

20. Page 17, line 1.
Strike: "19"
Insert: "20"

21. Page 17, line 2.
Following: "section."
Insert: "A child support delinquency existing at the time that an interim parenting plan is vacated remains a judgment subject to collection."

22. Page 17, line 20.
Following: "recipient of"
Strike: "aid to families with dependent children"
Insert: "cash assistance under the temporary assistance for needy families block grant"

23. Page 17, line 30.
Strike: "40-4-303"
Insert: "40-4-301"

24. Page 18, line 24.
Following: "child"
Strike: "of a marriage"

25. Page 18, line 30.
Strike: "19"
Insert: "20"

26. Page 19, line 1.
Strike: "19"
Insert: "20"

27. Page 19, line 7.
Following: "which"
Strike: "must"
Insert: "may"

28. Page 19, line 11.
Strike: "including"
Insert: "which may include"

29. Page 19, line 13.
Following: "care"
Insert: ", development,"

30. Page 19, line 14.

Following: "supervision,"
Insert: "spiritual growth and development,"

31. Page 19, line 17.
Strike: "interests"
Insert: "interest"

32. Page 19, line 18.
Following: "(d)"
Strike: remainder of line 18 through "relationships"
Insert: "the interactions and interrelationship of the child with the child's parents and siblings and with any other person who significantly affects the child's best interest"

33. Page 19, line 21.
Following: "plan"
Strike: "must"
Insert: "may"

34. Page 19, line 30.
Following: "needs;"
Strike: "and"

35. Page 20, line 1.
Following: "child"
Strike: "."
Insert: ";"

36. Page 20, line 2.
Strike: line 2 in its entirety

37. Page 20, line 3.
Strike: "(a) provisions for"
Insert: "(f)"

38. Page 20, line 6.
Strike: "(b)"
Insert: "(g)"

39. Page 20, line 8.
Strike: "(c)"
Insert: "(h)"

40. Page 20, line 10.
Strike: "religious upbringing"
Insert: "spiritual development"

41. Page 20, line 11.
Following: "care"
Insert: "and physical growth"

42. Page 20, line 12.
Strike: "(d)"
Insert: "(i)"

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43. Page 20, line 14.
Strike: "(e) other provisions applicable to"
Insert: "(j)"

44. Page 20.
Following: line 26
Insert: "(7) The court may order that the parenting plan be sealed if privacy of the plan is necessary to protect the best interest of the child."

45. Page 21, line 27.
Strike: "19"
Insert: "20"

46. Page 21, line 30.
Following: "parent."
Strike: "as defined in 40-4-219(1)(e)."

47. Page 23, lines 21 through 23.
Following: "parent." on line 21
Strike: remainder of line 19 through "contact." on line 23

48. Page 27, line 7.
Strike: "**Court-ordered**"
Insert: "**Court-sanctioned**"

49. Page 27, line 12.
Strike: "court-sponsored"
Insert: "court-sanctioned"

50. Page 27, line 19.
Strike: "court-sponsored"
Insert: "court-sanctioned"

51. Page 27, line 21.
Following: "25-1-201(9)."
Insert: "Costs may include parenting evaluation and guardian ad litem services."

52. Page 31, line 22.
Strike: "19"
Insert: "20"

53. Page 32, line 14.
Strike: "18 and"
Following: "19"
Insert: "and 20"

54. Page 32, line 16.
Strike: "18 and"
Following: "19"
Insert: "and 20"

55. Page 32, line 17.
Strike: "34"

Insert: "35"

56. Page 32, line 18.
Strike: "34"
Insert: "35"

57. Page 32, line 29.
Following: "1997"
Insert: ", including proceedings regarding modification of orders or decrees existing on October 1, 1997"

HOUSE STANDING COMMITTEE REPORT

February 18, 1997

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 231** (first reading copy -- white) **do pass as amended.**

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 16.
Strike: "COURT-ORDERED"
Insert: "COURT-SANCTIONED"

2. Title, line 21.
Following: "40-4-109,"
Insert: "40-4-110,"

3. Page 4, line 1.
Strike: "court-sponsored"
Insert: "court-sanctioned"

4. Page 8.
Following: line 25
Insert: "**Section 9.** Section 40-4-110, MCA, is amended to read:

"**40-4-110. Costs -- ~~attorney's~~ professional fees.** (1) The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under chapters 1 and 4 ~~of this title~~ and for ~~attorney's~~ professional fees, including sums for legal and professional services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the ~~attorney~~ professional, who may enforce the order in ~~his~~ the professional's name.

(2) The purpose of this section is to ensure that both parties have timely and equitable access to marital financial

2/18
mp

Committee Vote:
Yes 14, No 6.

381245SC.Hgd

resources for costs incurred before, during, and after a proceeding under chapters 1 and 4.""
Renumber: subsequent sections

5. Page 9, line 16.
Strike: "must"
Insert: "may"

6. Page 9, line 17.
Strike: "19"
Insert: "20"

7. Page 12, line 17.
Following: "support"
Insert: "obligation"
Following: "paid"
Insert: ", without need for further court order:
(i) to the person with whom the child resides by legal order;
(ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical care and control of the child to another person, organization, or agency, to the person, organization, or agency to whom physical custody has been relinquished;
(iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason to receive or collect the child support obligation, to the person, organization, or agency having the right to receive or collect the payment; or
(iv) to the court for the benefit of the minor child"

8. Page 12, line 25.
Strike: "pursuant to the child support guidelines adopted under 40-5-209"

9. Page 13, line 26.
Strike: "authority"

10. Page 14, line 14.
Strike: "authority over"
Insert: "of"

11. Page 14, line 18.
Strike: "authority"

12. Page 14, line 20.
Strike: "authority"
Insert: "of the child"

13. Page 14, line 24.
Strike: "authority"

14. Page 14, line 26.
Strike: "authority"

15. Page 15, line 5.
Strike: "**interests**"
Insert: "interest"

16. Page 15, line 6.
Strike: "interests"
Insert: "interest"

17. Page 15, line 7.
Following: "factors,"
Strike: "including"
Insert: "which may include"
Following: "but"
Insert: "are"

18. Page 16, line 28.
Following: "adopted."
Insert: "A child support delinquency existing at the time that an interim parenting plan is vacated remains a judgment subject to collection."

19. Page 16, line 30.
Following: "vacated."
Insert: "A child support delinquency existing at the time that an interim parenting plan is vacated remains a judgment subject to collection."

20. Page 17, line 1.
Strike: "19"
Insert: "20"

21. Page 17, line 2.
Following: "section."
Insert: "A child support delinquency existing at the time that an interim parenting plan is vacated remains a judgment subject to collection."

22. Page 17, line 20.
Following: "recipient of"
Strike: "aid to families with dependent children"
Insert: "cash assistance under the temporary assistance for needy families block grant"

52

23. Page 17, line 30.
Strike: "40-4-303"
Insert: "40-4-301"

24. Page 18, line 24.
Following: "child"
Strike: "of a marriage"

25. Page 18, line 30.
Strike: "19"
Insert: "20"

26. Page 19, line 1.
Strike: "19"
Insert: "20"

27. Page 19, line 7.
Following: "which"
Strike: "must"
Insert: "may"

28. Page 19, line 11.
Strike: "including"
Insert: "which may include"

29. Page 19, line 13.
Following: "care"
Insert: ", development,"

30. Page 19, line 14.
Following: "supervision,"
Insert: "spiritual growth and development,"

31. Page 19, line 17.
Strike: "interests"
Insert: "interest"

32. Page 19, line 18.
Following: "(d)"
Strike: remainder of line 18 through "relationships"
Insert: "ensuring the interactions and interrelationship of the child with the child's parents and siblings and with any other person who significantly affects the child's best interest"

33. Page 19, line 21.
Following: "plan"
Strike: "must"
Insert: "may"

34. Page 19, line 30.
Following: "needs;"
Strike: "and"

35. Page 20, line 1.
Following: "child"
Strike: "."
Insert: ";"

36. Page 20, line 2.
Strike: line 2 in its entirety

37. Page 20, line 3.
Strike: "(a) provisions for"
Insert: "(f)"

38. Page 20, line 6.
Strike: "(b)"
Insert: "(g)"

39. Page 20, line 8.
Strike: "(c)"
Insert: "(h)"

40. Page 20, line 10.
Strike: "religious upbringing"
Insert: "spiritual development"

41. Page 20, line 11.
Following: "care"
Insert: "and physical growth"

42. Page 20, line 12.
Strike: "(d)"
Insert: "(i)"

43. Page 20, line 14.
Strike: "(e) other provisions applicable to"
Insert: "(j)"

44. Page 20, lines 20 and 21.
Following: "parent" on line 20
Insert: ","
Strike: ", regardless" on line 20 through "plan," on line 21

45. Page 20.
Following: line 26
Insert: "(7) The court may order that the parenting plan be sealed if privacy of the plan is necessary to protect the best interest of the child."

46. Page 21, line 27.
Strike: "19"
Insert: "20"

47. Page 21, line 30.
Following: "parent,"
Strike: "as defined in 40-4-219(1)(e),"

48. Page 23, lines 21 through 23.
Following: "parent." on line 21
Strike: remainder of line 19 through "contact." on line 23

49. Page 27, line 7.
Strike: "**Court-ordered**"
Insert: "**Court-sanctioned**"

50. Page 27, line 12.
Strike: "court-sponsored"
Insert: "court-sanctioned"

51. Page 27, line 19.
Strike: "court-sponsored"
Insert: "court-sanctioned"

52. Page 27, line 21.
Following: "25-1-201(9)."
Insert: "Costs may include parenting evaluation and guardian ad litem services."

53. Page 31, line 22.
Strike: "19"
Insert: "20"

54. Page 32, line 14.
Strike: "18 and"
Following: "19"
Insert: "and 20"

55. Page 32, line 16.
Strike: "18 and"
Following: "19"
Insert: "and 20"

56. Page 32, line 17.
Strike: "34"
Insert: "35"

57. Page 32, line 18.
Strike: "34"
Insert: "35"

58. Page 32, line 29.
Following: "1997"
Insert: ", including proceedings regarding modification of orders or decrees existing on October 1, 1997"

-END-

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 2/18/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES 9:45	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH 8:20	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 19, 1997, at 9:00 a.m., in the Senate Judiciary Chambers of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 159, HB 203, HB 231, scheduled March 4, 1997
Executive Action: HB 68, HB 159, HB 426, HB 231

HEARING ON HB 231

Sponsor: **REP. BEVERLY BARNHART, HD 29, Bozeman**

Proponents: **Kerry Newcomer, Domestic Relations Subcommittee of the Montana State Bar**
Corbin Howard, Billings attorney
Kyle Cunningham, Domestic Relations Subcommittee of the Montana State Bar
Jennifer Bordy, Bozeman attorney, and Montana Trial Lawyers
Tim Kuntz, Montana Trial Lawyers Association
Vern Anvick, Miles City

Rob Tameler, Missoula attorney
Hank Hudson, Administrator, Child Support Enforcement Division, Department of Public Health and Human Services
Mary Alice Cook, Advocate for Children and Families

Opponents: **Russell LaVigne, People's Law Center for Montana Low Income Coalition, and Montana Welfare Action Coalition**
John Wolov, Helena attorney

Opening Statement by Sponsor: **REP. BEVERLY BARNHART, HD 29, Bozeman.** This is a long bill and is very important for children of divorce. We have changed the word "custody" to focus on a "parenting plan." The Domestic Relations Subcommittee of the Montana Stat Bar worked with others on this bill.

Proponents' Testimony: **Kerry Newcomer, Domestic Relations Subcommittee of the Montana State Bar.** This represents most of our work. Senate Bills 32 and 33 were also part of this statewide effort, which included psychiatrists, divorced persons, and the Courts.

Corbin Howard, Billings attorney. I have been in private practice since 1981, and am in family law practice. The bill addresses education, mediation, determination, and psychological evaluation. One purpose of the bill is to remove adversarial terminology. The bill will also organize the Courts to look into child support issues and to ascertain facts. It provides for a court-sanctioned education program. We have such a program in Billings which has been very helpful.

The Court has the ability to order parties in mediation in this bill. It also would have authority to order psychological evaluations, and we hope this would need to be done only rarely. Current law has been very uncertain even in interpretations in 1994 and 1996. In the Syverson case Justice Nelson specifically asked that the Legislature look at this section of law and clean it up, and to consider most the welfare of children because the divorce process can be very painful and conflict can continue for years.

I believe this bill advances the best interests of children, and it is endorsed by the Montana State Bar. A clinical psychologist in Missoula, Sarah M. Baxter, Ph.D., has sent a letter to the Committee in support of this legislation **(EXHIBIT #1)**.

Kyle Cunningham, Missoula attorney, and Domestic Relations Subcommittee of the Montana State Bar. I will try to answer some of the questions asked in the House. This bill is not intended to make divorce easier. We only tried to make it easier on the children. The bill requires moms and dads to look at their children very early in the divorce process, and as an on-going

concern. We hope this will help them see what they're putting their family through. In large towns it is easy for the parties to get away from each other, but this is not so in small towns.

Jennifer Bordy, Bozeman attorney, and member of the Montana Trial Lawyers Association. I believe there needs to be less litigation in the area of family law. A lot of cases are about the sole custody issue. I represent more men than women in my practice.

I believe a few amendments should be made. In Section 16, parties should be able to get rid of child support in a case of temporary order. In Section 20, (1)(6), it is important to put in the divisions of parental responsibility. In Section 22 (2), we need to increase the length of notice when the custodial parent intends to change residence, as the Courts need more time.

I am against the fee of $120 for amending the parenting plan, as teens tend to go back and forth between their parents. I believe the language concerning threat of physical abuse during the initial period should be removed, so that all ties with the other parent are not severed. I believe the bill does address important issues.

Tim Kuntz, Montana Trial Lawyers Association. I am also a divorced parent and support this legislation.

Vern Anvick, Miles City (EXHIBIT #2). I am an unmarried parent with a child, Ashley. In our case there were 50 denials in 20 months, and the mother's family essentially assumed ownership of our child. I was poorly represented in the trial. The mother frustrated my attempts to bond with my daughter, even though I have paid support since the very beginning.

I am concerned because even with all my efforts in the past two years and the obvious bond with my child and my being a viable part of her life, Ashley's mother has not ever had a bond with her father, and my father died when I was two years old, so I never knew him. I have offered to go to a child psychologist with my child and her mother.

I believe in-home studies should be conducted by the same person on both parties, and that the visits should be unannounced. If both parents want custody and are fit parents, I don't believe sole custody should be awarded. The judge went against the state's wishes, and my wishes in awarding sole custody to Ashley's mother.

{Tape: 1; Side: A; Approx. Time Count: #30.5; Comments: None}

Rob Tameler, Missoula attorney. The child is the important aspect, and is the one caught in the middle. This bill would help to eliminate this problem. With SB 16, SB 32, and SB 33, the Courts have gone a long way in making people think when

considering divorce, and I believe this bill falls in line with that. I hope you will pass this bill.

Hank Hudson, Administrator, Child Support Enforcement Division, Department of Public Health and Human Services (CSED). It is not uncommon for us to be pulled into a divorce and the law then requires investigations. The important point is that the pain and damage being done to children of divorce will only be exacerbated by a child custody investigation. I believe this will reduce these kinds of accusations against each other by parents. We also handle child mental health, and believe this bill will help in this area, as well.

Mary Alice Cook, Advocate for Children and Families. I strongly support this bill.

Opponents' Testimony: **Russell LaVigne, People's Law Center for Montana Low Income Coalition, and Montana Welfare Action Coalition (EXHIBIT #3).** We only oppose one section of this bill. Low income people have a difficult time gaining access to the Courts, but we strongly opposed the amendment of the parenting plan modification section on page 24, Section 23, line 4. Section (c) is important, but was taken out of consideration as an abuser can continue abuse via this threshold modification.

{Tape: 1; Side: A; Approx. Time Count: #39.8; Comments: None}

We had an idea for a threshold hearing or mandatory filing of a bond to make it a serious situation, and not just harassment. When the Child Support Enforcement Division contacts the non-custodial parent, it usually results in a petition for modification.

John Wolov, Helena attorney. If the Committee thinks the stability of the child is important then they need to say so. Secondly, relocation would now definitely trigger a reevaluation.

{Tape: 1; Side: B; Approx. Time Count: #00.; Comments: 9:50 a.m.}

Third, the bill makes entry into the Court system simple, and the only words holding back entry are "change of circumstances". If a change is even slight, a parent could get back into court. So, what is better may really be an issue of who can pay a professional. In the House, the thought behind the bill now is that Section 20 is not permissive. Also, the strong presumption for sharing custody is now just one of many factors, so you may want to reemphasize this. There is a technical error in the first part of Section 20 where there are too many "ands", which your staff may want to correct.

I urge you to go to the reconciliation provisions in the Code and have them apply as mandatory in every county of Montana. I support the idea of a parenting plan.

Questions From Committee Members and Responses: **SEN. MIKE HALLIGAN.** I would like you to comment on the items brought up in testimony, including Jennifer Bordy's comments. **Corbin Howard.** I believe the order might cause considerable confusion and would be a problem particularly if welfare benefits were extended to a party during the process. **Kerry Newcomer.** That is a CSED addition and won't affect our overall plan. I would tend to agree with Ms. Bordy here, although it creates a management problem for CSED. Concerning increased time notice for relocation, if additional time is needed, parents need to know the rules. I have practiced family law for the past 16 years, and most people want to know what the result is going to be if they do a certain thing. If you want to expand the time, that is fine, but I didn't want to exclude potential employment if this can't be done within a given period of time.

SEN. HALLIGAN. What about the comments on Section 20, Subsection (1)(b) to add greater flexibility to the parenting plan? **Corbin Howard.** I believe the bill is very flexible in its current form, and encourages people to be more specific if they wish, but those provisions are optional.

SEN. HALLIGAN. Would you address taking out the serious endangerment language, and mandatory conciliation and modification of procedure? **Corbin Howard.** Current law allows modification of child custody if things change with parents. If a parent changes residence form Glendive to Beech, this indicates the Court needs to talk about what's best for the child. If they move from Glendive to Libby, we would have to prove serious endangerment, and this hasn't worked very well. Serious endangerment only applies in a few cases, and the rules keep changing (cases decided in 1994 and on January 3, 1997).

Serious endangerment is a worn-out term and can be used under existing law to cut off parental contact with a child. But the Montana Supreme Court just allowed such a parent to have custodial rights more than half the time. The rebuttal presumption of the primary resident parent problem is that a divorced mom with kids probably won't be at home, but out working at a job. So why have this, as it can be taken advantage of by a parent.

The level of fee we chose is to be used for education and evaluations in district court. Mandatory conciliation is allowed by existing law, but is not used much. It's more work than judges can handle now.

{Tape: 1; Side: B; Approx. Time Count: #21.3; Comments: None}

SEN. SHARON ESTRADA. How much input did DPHHS have in putting this together? **Hank Hudson.** We didn't have a substantial role, but basically kept informed of interests in this issue.

SEN. ESTRADA. Do we have in statute similar language to Sections 19 and 20 of the bill? **Corbin Howard.** No. The closest would be the statute on the best interest of the child.

SEN. ESTRADA. I am concerned with the language on line 10, page 20. Do we really need a law to tell us how to deal with children? I realize divorce is traumatic. **Corbin Howard.** The provisions in Section 20 are optional. The purpose we're after is to direct clients to be concerned about what's good for their child. Some parents would already do this, but some need the motivation of this bill. **SEN. ESTRADA.** If they put together a parenting plan and violate it, would they be breaking the law? **Corbin Howard.** They would be violating the provisions.

Closing by Sponsor: **REP. BARNHART.** In this legislation, we are looking at the best interest of the child. This bill is personal to me, as I was divorced 15 years ago. I believe the tools in this bill would save a lot of problems, and that things would be different for children of divorce.

I ask that **SEN. HALLIGAN** carry this bill on the floor.

{Tape: 1; Side: B; Approx. Time Count: #31.5; Comments: 10:20 a.m.}

HEARING ON HB 159

Sponsor: **REP. BEVERLY BARNHART, HD 29, Bozeman**

Proponents: **Hank Hudson, Administrator, Child Support Enforcement Division (CSED), Department of Public Health and Human Services (DPHHS)**
Mary Alice Cook, Independent Advocate for Children and Families

Opponents: **None**

Opening Statement by Sponsor: **REP. BEVERLY BARNHART, HD 29, Bozeman.** This is a small, but important bill for DPHHS. It allows them, in cases where day care is not licensed or is inadequate, to address a couple of courts for help.

Proponents' Testimony: **Hank Hudson, Administrator, Child Support Enforcement Division, Department of Public Health and Human Services.** This was originally contained in two bills, which were tabled. This one was taken off the table, as it is less controversial. We want to be able to pursue these issues in more than just district court.

Mary Alice Cook, Independent Advocate for Children and Families. I support this legislation.

Opponents' Testimony: None

EX

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 3-19-97
BILL NO. HB 231

Sarah M. Baxter, Ph.D.

233 E. Pine
Missoula, MT 59802
(406) 549-4088

March 13, 1997

Senate Judiciary Committee
Montana State Capitol
Helena, MT

Dear Senator Crippen and Members of the Senate Judiciary Committee:

I am a clinical psychologist who has been in private practice in Missoula for the past eight years. The majority of my practice is devoted to families and children, and, as such, I work with many families who are experiencing divorce. As a result of my expertise and experience in this area, I have had the opportunity to work with the Domestic Relations Study Commission, specifically in developing House Bill 231. I am writing to urge your support as I am unable to attend the hearing and testify on behalf of this important legislation. Please forgive my absence; I am in Ismay helping my sister with calving.

Everyday I see and hear from children about the impact that divorce has on them. I listen to their pain and confusion as they sort out how to maintain their connections with both their parents. They frequently tell me in poignant ways how their loyalty is being tested by their own parents. Those parents who remain in conflict engender distress, sadness, anger, and even disgust in the very children whose "interests" they seek to preserve by fighting with one another. Amazingly, children often become cognizant of legal issues, such as "residential custody," as most parents cannot help but convey these subtle concepts to their children.

I have spent many hours working on House Bill 231 as a result of the things I have heard directly from the children experiencing this family disruption. As a psychologist, I know that the literature on children of divorce tells us that children need ongoing, meaningful contact with both parents whenever possible, and that the best outcomes for children are those in which conflict between parents is kept away from the children. I believe that House Bill 231 encourages parents to accomplish both these goals. It does not represent government intrusion into these areas, nor does it represent a somehow "easier", more convenient or more accessible divorce. Rather, it represents a more humane process than what currently exists for parents who have decided they must undergo a divorce.

Finally, please be aware that the views I am expressing here are representative of those of many other mental health professionals. Throughout the process of working on this bill, I have consulted with colleagues and listened to their feedback. This legislation contains concepts and methods that many of us believe are essential to preserving the mental health of children.

I appreciate the opportunity to be heard and urge your support of this bill.

Respectfully,

Sarah M. Baxter

Sarah M. Baxter, Ph.D.
Clinical Psychologist

Senate Judiciary Committee

~~3-19-97~~
SB 231
SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 3-19-97
SB/HB HB 231

If both parents are found fit & proper & neither parent testifies the other should not have custody; there should be no way sole custody can be awarded.

In my situation, I was met with 50 denials in 20 months; her treating me as if Ashley belonged to her & her family only; I did all the traveling (400 miles round trip) to form a strong bond; she refused all attempts to educate herself or to agree to a parenting plan, because she believed she would have the child, support payments, & maintain her single life. No concern for Ashley's well fare on her part; I met all my responsibilities, plus & yet she is awarded sole custody.

Ashley & I have spent 8 days per month for the last year & now she is limited to 1 weekend per month & 1 week every 3 months. That is not in the child's best interest. Nor does it follow the State's wishes for her children. Make Judges follow the State Code!

The quality of my daughters life should not depend on the will & competency of an attorney or the personal bias of a judge.

Mediation; counseling & education of the affects on the child, should be mandatory first steps.

In home studies should be unannounced; done by the same person; with follow ups done.

Shared parenting would keep women from getting pregnant to have a child for themselves without regard for what it will do to the child; & the fathers life.

I went to work at 5:30 am worked until noon & drove 3 hours one way to spend 20 minutes with Ashley getting a shot & a check up. to be denied spending a couple hours with her before driving 3 hours back.

She testified I was a very good dad; she was happy I was there for Ashley; Ashley got very excited & ran to the door when she knew her daddy was there to get her, I was supportive through the pregnancy... I made extraordinary efforts, time & expenses to be an excellent father. I arranged for her baptism & the mother came dressed in shorts & a sleeveless blouse. I have Ashley's shots record & all her medical medical records; I have taken Ashley to church several times, her mother has not been to church since high school; she wants Ashley all to

herself, even though she knows I am a good father. That is not in the best interest of the child at all. Yet she is awarded sole custody! She has made us spend over $10,000.00 of Ashley's future money, just to try to take Ashley's father out of her life, for the mother's totally selfish reasons. I am fighting to keep both parents in Ashley's life, because I know what it is like to grow up without a father. Mine died when I was 2. Now, a Judge who knows nothing about me as a person or as a father, goes against the wishes of the mother; father; the State; God & Ashley based on her reactions to seeing me & being left by me when I return her; says Ashley's father should not be involved in her life. Make Judges accountable to some committee & or at least the Code of the State of Montana.

Vern Anvik
110 Meadow Lane
Miles City, Mt 59301
406-232-6008

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 3-19-97
BILL NO. HB231

IN OPPOSITION TO HB 231

Submitted by: Vivian Marie
People's Law Center
P.O. Box 6208
Helena, Montana 59604
(406) 443-7357

STANDARD FOR MODIFICATION

The most important change in Montana's family law is made to M.C.A. Section 40-4-219. Right now, in order to bring an action to modify custody, a parent has to show initially that a substantial change has occurred since the last decision was made, and in addition must show that one of the listed factors applies:

(1) the parties agree on the change; (making it easy for folks who do agree that a change is necessary for the child)

(2) the child has as a matter of fact, already been integrated into the other parent's household with the acquiesence of the custodian;

(3) the present situation seriously endangers the child **and the harm caused by the current situation outweighs the harm caused by the change;** (a statement that the legislature understands that any major change, particularly of primary caregiver, brings some negative consequences for a child)

(4) the child is over 14 years of age and desires the change;

(5) the custodial parent has willfully and consistently interfered with visitation; or

(6) the custodian intends to move the child out of state (this bill would change this to any change over 30 miles)

I think that this current law gives plenty of leeway for change that is beneficial, but does put up a barrier to continued, unfounded actions.

The proposed bill would take away the threshold. A parent can allege at any time that a change is in the best interests of the child, and the court will hear the matter. When hearing it, the court may consider the six things listed above, but they are now only factors to think about. Serious endangerment is gone altogether.

LOSS OF PRESUMPTIONS

Last session, this legislature created some presumptions in terms of what is in a child's best interests. These included paying for birth costs and later for support, if able. They included keeping a child with its accustomed primary caregiver. They were rebuttable presumptions, so there was room for judicial discretion. Still, as presumptions they carried some weight. They were the legislature's policy guides to judges.

The proposed legislation demotes these presumptions to mere factors for consideration in a long list of others in Section 40-4-212. Clearly this change weakens the policies considerably.

PENALTIES FOR CHANGING A CHILD'S RESIDENCE

Right now, a parent who wants to move a child out of state must give notice to the other parent or obtain that parent's written

consent. If the noncustodial parent disagrees with the move, he or she may bring a court action to modify custody. In practice, there is some real variation from judge to judge as to whether they will approve of moving a child. In general, the successful "mover" must show a real plan: the change is necessary because of a job or college, the parent has planned ahead for housing, child care and other security issues.

If the moving parent does not give proper notice, this is possibly grounds for changing custody, it is considered interference with visitation and/or custody rights of the other parent and thus inherently not in the best interests of the child. In addition, this behavior is now a felony carrying prison time.

The proposed legislation would change the moving limit from the state of Montana to 30 miles. I believe this is too restrictive and, again, increases the opportunities for dispute. Montana distances being what they are, the next town may easily be more than thirty miles away. A move within your own county may easily exceed 30 miles. This provision would apply even if the visiting parent lived two hundred miles away to begin with.

There was valid legal ground for using the state as a measure. When a parent leaves the state, enforcement of the Montana decree becomes more difficult, procedurally and substantively. Moves instate, on the other hand, pose no additional legal burden for the noncustodial parent.

While the legislation kept the criminal statute limits at the state line, the reference in the criminal section back to Section 40-4-217 makes it questionable whether the 30 mile limit is brought back into the equation. We will have to be careful to give clear notice to parents about the criminal law, because no one's common sense will tell them that a 30 mile move is criminal.

CONCLUSION

I believe this bill sweeps far too broadly in its effort to do away with the concept of custody. The legislature can require the filing of parenting plans and parent education without doing violence to the entire Marriage and Divorce Act.

Our current code comments emphasize stability: making a decision and staying with it unless there's a very good reason to change. It makes continuity of care a priority, very deliberately and explicitly. The proponents of this bill believe it is too hard to make changes. They are asking you to reverse a vital policy underlying the entire code.

I ask you to take a careful look at all the changes they make, and to maintain current standards protecting stability.

71-R S.

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3-19-97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN 10:25 present	✓		
BRUCE CRIPPEN, CHAIRMAN present @ 10:10 am	✓		

SEN:1995
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DATE 3-19-97

H ~~SENATE~~ COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 231, HB 159, HB 203

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Vern Anrik	myself	231	✓	
KERRY N. NEWCOMER	SELF - State Bar - Dom. Rel. Section Comm	231	✓	
Kyle Cunningham	Self - State Bar Dom Rel. S. Comm	231	✓	
Jennifer Bardy	self - MT Trial Lawyers	231	✓	
Russell LaVigne	MT Low Income Coalition MT Welfare Action Coalition	231		✓
Corbin Howard	Self	231	X	
Robert Tamilia	Self	231	X	
J Sherlock		203	—	
Jean Whittinghill	Ct. Assessment Prog	203	X	
Ann Gilkey	DPHHS	203	X	
R Kerstein	DPHHS	203	+	
RTorres	MT Ch. NASW	203	✓	
Alan Crawford	Christian Science church	203	Amend	
MARY ALICE COOK	ADV for Children & Families	231 203 159	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 3-19-97

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 231, HB 159, HB 203

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Hallow John	Self	HB231	X	
Tim Kuntz	MTLA / Self	HB231	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 25, 1997, at 10:09 a.m., in the Senate Judiciary Chambers (Room 325) of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 48, consideration of House Amendments (new procedure)
Executive Action: SB 48, HB 203, HB 231

HEARING ON SB 48

Discussion: **CHAIRMAN BRUCE CRIPPEN** explained that since SB 48 was substantially amended in the House, it could be sent back to the Senate Judiciary Committee for concurrence of rejection, but cannot be changed.

SEN. MIKE HALLIGAN. We need clarification of some of these amendments. **CHAIRMAN CRIPPEN.** We need to treat them somewhat like a hearing and make recommendations even though that is not clearly stated in the rules. The sponsor is no longer involved, other than to make suggestions. If we reject the amendments, the

Discussion: **SEN. HALLIGAN.** At what point does it become serious? There are stages of this, and it could interfere with a preventive approach.

Vote: **VICE CHAIRMAN GROSFIELD'S MOTION TO AMEND CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS JABS, HALLIGAN, AND DOHERTY WHO VOTED NO.**

Motion/Vote: **VICE CHAIRMAN GROSFIELD MOVED TO CHANGE 41-3-1011 TO 41-3-1010, A TECHNICAL CORRECTION ON PAGE 13, LINE 10. THE MOTION CARRIED UNANIMOUSLY.**

Motion/Vote: **SEN. HALLIGAN MOVED HB 203 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON HB 231

Discussion: **VICE CHAIRMAN GROSFIELD.** How is the child going to trigger periodic review of the parenting plan? **SEN. HALLIGAN.** Through a lay person as guardian ad litem or the Court. Jennifer Bordy told us she wanted averages in child support extinguished as part of final planning. Also, it was brought up that the fee was too high.

SEN. DOHERTY. There is a fairly high threshold now, and this would change in the bill. But, given that spite exists, are we increasing the possibility of people requesting a change out of spite? **SEN. HALLIGAN.** In the case in Sanders County where there was a change of custody, a change of circumstances in addition to serious endangerment of the child's health or welfare, it is a very heavy standard to change custody unless parents consent. This repeals that from the law, as it doesn't reflect the reality. For example, as boys become teenagers, they mostly want to go live with dad. The bill does make it easier for the parents to bring an action for a custody change, but it still has to be in front of a judge.

{Tape: 2; Side: A; Approx. Time Count: #11.5; Comments: None}

SEN. ESTRADA. I talked with Judges Larson and Fagg who support the bill, as well as **SEN. HALLIGAN.**

SEN. HALLIGAN. I am asking for time to get together with Valencia Lane to produce an amendment.

SEN. JABS. Do you want the language on page 24, line 15 removed? **SEN. HALLIGAN.** Yes, as dads and moms will be sharing parenting a lot more.

SEN. MCNUTT. How often do you encounter serious endangerment?

Motion: **SEN. ESTRADA MOVED HB 231 BE CONCURRED IN.**

Discussion: **SEN. HOLDEN.** On pages 19-20, in new Sections 19 and 20, why do we need this in statute? **SEN. HALLIGAN.** All of this is essential in existing law. It takes "best interest" and "custodial" statutes and brings them into one.

SEN. DOHERTY. I have been asked to change custody orders, and I don't like it, but I tell people that unless they can demonstrate substantial endangerment, I don't care. Is there any comfort that only good will happen in the bill, and not bad?

SEN. ESTRADA WITHDREW HER MOTION. NO FURTHER ACTION WAS TAKEN ON HB 231 THIS DATE.

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3-24-97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN	✓		
BRUCE CRIPPEN, CHAIRMAN	✓		

SEN:1995
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MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 26, 1997, at 9:04 a.m., in the Senate Judiciary Chambers of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 100, posted March 25, 1997
Executive Action: HB 553, HB 231, HB 264, HB 100

Discussion: **CHAIRMAN BRUCE CRIPPEN.** Code Commissioner Petesch says amendments don't follow a tabled bill, but the Senate disagrees, if a motion is made to take a bill off the table to put it on second reading along with the amendments. **Ward Shanahan, Helena attorney.** Greg Petesch says its a mechanical problem of how to get the amendments printed. **CHAIRMAN CRIPPEN.** Maybe it would be better to not pass the bill and then the amendments would go with the bill.

concerned as a businessman. When Sears or another large company starts doing what they're supposed to do, there is a clear, one-sided negotiation, when push comes to shove, and I've been in these situations. Even if I had an 80 percent chance of winning, the 20 percent chance of losing would mean my paying for the cost of a suit with a company who has the top attorneys in their field. The risk for me is too great. I'd have too much to lose. It hits the middle group of people, as **SENATORS DOHERTY AND HOLDEN** have said. This should not be in the action plan, and we ought not to do this.

SEN. ESTRADA. REP. STOVALL's interest is good, and I sympathize and understand, but it seems this should tug at the conscience of some attorneys.

Vote: SEN. HALLIGAN'S MOTION TO TABLE HB 553 CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS ESTRADA AND JABS WHO VOTED NO.

EXECUTIVE ACTION ON HB 231

Motion: SEN. HALLIGAN MOVED HB 231 BE CONCURRED IN.

Discussion: SEN. HALLIGAN. I called several attorneys concerning the endangerment issue, and they all said balance had been struck, and there was no need to amend the bill. They also agreed to send a response to all our questions today. I will get these to you for the floor debate.

{Tape: 1; Side: A; Approx. Time Count: #43.0; Comments: 9:45 a.m.}

CHAIRMAN CRIPPEN. I have a letter from Debbie Rostocki concerning the language on page 16, lines 5-6 and 29-30. **SEN. HALLIGAN.** That would be included as a discussion item in the parenting plan. There is no question of this.

Valencia Lane. I received a conflict notice form the Code Commissioner. On page 2, lines 7-8, the new fee is set at $120. This is the same as several other fees in that section, but in HB 343, which has already been passed, those fees were raised to $150. If both bills pass, the existing $120 fees become $150, and this one would remain at $120.

Vote: SEN. HALLIGAN'S MOTION THAT HB 231 BE CONCURRED IN CARRIED UNANIMOUSLY. SEN. HALLIGAN WILL CARRY THE BILL.

{Tape: 1; Side: b; Approx. Time Count: #3.3; Comments: None}

EXECUTIVE ACTION ON HB 264

Amendments: hb026401.avl (Holden) **(EXHIBIT #4)**

Discussion: SEN. HALLIGAN. REP. MOLNAR was concerned with making school districts aware of criminal kids coming into their

SENATE STANDING COMMITTEE REPORT

March 26, 1997

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill 231 (third reading copy -- ~~blue~~), respectfully report that House Bill 231 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

661157SC.SRF

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3-26-97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN	✓		
BRUCE CRIPPEN, CHAIRMAN	✓		

SEN:1995
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